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Attorneys for Plaintiff
E.PIPHANY, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

E.PIPHANY, INC., a California corporation,

Plaintiff,

vs.

ST. PAUL FIRE & MARINE INSURANCE
COMPANY, a Minnesota corporation,

Defendant.

) Case No.: CV-08-2621-PVT

) Hon. Patricia V. Trumbull

) **DECLARATION OF BRAD STEINER IN**
) **SUPPORT OF PLAINTIFF E.PIPHANY,**
) **INC.'S MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT ON ST. PAUL**
) **FIRE & MARINE INSURANCE**
) **COMPANY'S DUTY TO DEFEND AND**
) **BREACH OF ITS DUTY TO DEFEND**

) Date: July 21, 2008

) Time: 9:00 a.m.

) Ctrm: 5, 4th Floor

1 I, BRAD STEINER, declare:

2 1. I am employed by Infor Global Solutions (Michigan), Inc. ("Infor"), successor-in-
3 interest to E.piphany, Inc. ("E.piphany") as Vice President and Deputy General Counsel. I am
4 qualified to testify about the business records of E.piphany that are maintained in the normal course
5 of business in the files of Infor. I know the facts set forth in this declaration to be true and correct
6 based on my personal knowledge thereof and, if called to testify, I could and would testify
7 competently thereto.

8 2. **Exhibits "2", "3", "4", "5", "6", "7" and "10"** are business records of E.piphany
9 that are maintained in the normal course of business in the files of Infor, the successor-in-interest to
10 E.piphany.

11 3. Attached as **Exhibit "2"** is a copy of a Comprehensive General Liability policy that
12 E.piphany purchased from St. Paul Fire & Marine Insurance Company ("St. Paul"), policy number
13 TE09405603, effective from June 24, 2002 to June 24, 2003.

14 4. Attached as **Exhibit "3"** is a copy of a letter dated July 23, 2004, sent to Eric Schuldt,
15 E.piphany's assistant general counsel, by Catherine M. Curry, a claims adjuster with St. Paul,
16 responding to E.piphany's claim for insurance coverage submitted to St. Paul on July 22, 2004.

17 5. Attached as **Exhibit "4"** is a copy of a letter dated July 27, 2004, sent to Eric Schuldt,
18 by Catherine M. Curry, responding to E.piphany's claim for insurance coverage submitted to St.
19 Paul on July 22, 2004.

20 6. Attached as **Exhibit "5"** is a copy of a letter dated November 22, 2004 sent by James
21 S. Price of Aon Risk Services on behalf of E.piphany to Catherine M. Curry requesting a second
22 coverage review under E.piphany's insurance policy attached as **Exhibit "2."** Aon Risk Services
23 was E.piphany's broker for the insurance policy attached as **Exhibit "2."**


24 7. Attached as **Exhibit "6"** is a copy of a letter dated December 9, 2004 sent to Eric
25 Schuldt by Catherine M. Curry in response to the letter attached as **Exhibit "5."**

26 8. Attached as **Exhibit "7"** is a letter dated January 10, 2005, sent to James S. Price by
27 Dale Evensen, an attorney for St. Paul, responding to E.piphany's requests for insurance coverage
28 under the insurance policy attached as **Exhibit "2."**

1 9. Attached as **Exhibit "10"** is a letter dated February 6, 2008, sent to Gwen Nielsen,
2 assistant general counsel for Infor by Pamela A. Johnson of St. Paul, responding to E.piphany's
3 requests for insurance coverage under the insurance policy attached as **Exhibit "2."**

4
5
6 I declare under penalty of perjury under the laws of the United States that the foregoing is
7 true and correct.

8
9
10
11 Dated: June 10, 2008



Brad Steiner

EXHIBIT 2

COPY

GLOBAL COMPANION POLICY INTRODUCTION

The **St Paul**

This policy protects against a variety of losses. There are also some restrictions. We've written this policy in plain, easy-to-understand English. We encourage you to read it carefully to determine what is and what is not covered, as well as the rights and duties of those protected.

Policy Number: TE09405603 ✓

NORTHERN CALIFORNIA
100 CALIFORNIA STREET
SUITE 300
SAN FRANCISCO, CA. 94111

In return for your premium, we'll provide the protection stated in this policy.

We, us, our, and ours mean the **St. Paul Fire and Marine Insurance Company**. We're a capital stock company located in St. Paul, Minnesota.

The words you, your and yours mean the insured named here, CORPORATION

E.PIPHANY, INC.

1900 S. NORFOLK ST., STE. 310 ✓
SAN MATEO, CA. 94403

Your policy is composed of The Global Companion General Rules, an explanation of What To Do If You Have A Loss, and one or more Global Companion Insuring Agreements along with their Coverage Summaries.

It may also include one or more endorsements. Endorsements are documents that change your policy. The Policy Forms List shows all the forms included when this policy begins.

One of our authorized representatives will also countersign the policy.

This policy will begin on 06/24/02 ✓
and will continue until 06/24/03. ✓
Your former policy number is automatically replaced: TE09404431

Your premium for the policy period shown is: \$25,860.00 ✓

However, please refer to the Premiums section of the General Rules to see how final premiums are determined.

****NAMED INSURED CONT'D ON BACK****

Our authorized representative is:
0460681
AON RISK SERVICES INC. OF CA.
199 FREMONT STREET, #1400
SAN FRANCISCO, CA. 94105

Jay S. Fishman
President

D. Rosenberg
Secretary

Authorized Representative

Date

Processing Date 07/23/02 16:45 001

The St. Paul

AND/OR ITS DIVISIONS, SUBSIDIARIES,
AFFILIATED AND ASSOCIATED COMPANIES
AND/OR CORPORATIONS; JOINT VENTURES OR
PARTNERSHIPS ASSOCIATED THROUGH
OWNERSHIP OR MANAGEMENT IN WHICH
E.PIPHANY MAINTAINS AT 51% INTEREST;
AS PREVIOUSLY EXISTED, NOW EXIST OR
HEREAFTER BE CONSTITUTED.

COPY

DELIVERY INVOICE

The **ST Paul**

Company: ST. PAUL FIRE & MARINE INSURANCE COMPANY

I E.PIPHANY, INC.
N 1900 S. NORFOLK ST., STE. 310
S SAN MATEO CA 94403
U
R
E
D

Policy Inception/Effective Date: 06/24/02
Agency Number: 0460681

Transaction Type:
RENEWAL OF POLICY
Transaction number: 001
Processing date: 07/23/02
Policy Number: TE09405603

A
G AON RISK SERVICES INC. OF CA.
E 199 FREMONT STREET, #1400
N SAN FRANCISCO, CA. 94105
T

Policy Number	Description	Amount	Surtax/ Surcharge
TE09405603	SERIES 1,000 POLICY	\$25,860.00	

Account Date	Due Date	Premium	Comm. Rate	Payment Plan Service Charge	Surtax/ Surcharge
07/01/02		\$25,860.00	15.0%		

Agents Will Not Receive Commission On Payment Plan Service Charge, Surtax Or Surcharge. Please Report These Items Separately On Your Accounts.

The **St Paul**

DELIVERY INVOICE

The **St Paul**

Company: ST. PAUL FIRE & MARINE INSURANCE COMPANY

I E.PIPHANY, INC.
N 1900 S. NORFOLK ST., STE. 310
S SAN MATEO CA 94403
U
R
E
D

Policy Inception/Effective Date: 06/24/02
Agency Number: 0460681
Transaction Type:
RENEWAL OF POLICY
Transaction number: 001
Processing date: 07/23/02
Policy Number: TE09405603

A
G AON RISK SERVICES INC. OF CA.
E 199 FREMONT STREET, #1400
N SAN FRANCISCO, CA. 94105
T

Policy Number	Description	Amount	Surtax/ Surcharge
TE09405603	SERIES 1,000 POLICY	\$25,860.00	

The St Paul

DELIVERY INVOICE

The **St Paul**

Company: ST. PAUL FIRE & MARINE INSURANCE COMPANY

I E.PIPHANY, INC.
N 1900 S. NORFOLK ST., STE. 310
S SAN MATEO CA 94403
U
R
E
D

Policy Inception/Effective Date: 06/24/02
Agency Number: 0460681
Transaction Type:
RENEWAL OF POLICY
Transaction number: 001
Processing date: 07/23/02
Policy Number: TE09405603

A
G AON RISK SERVICES INC. OF CA.
E 199 FREMONT STREET, #1400
N SAN FRANCISCO, CA. 94105
T

Policy Number	Description	Amount	Surtax/ Surcharge
TE09405603	SERIES 1,000 POLICY	\$25,860.00	

The **St Paul**

COPY

POLICY FORM LIST

The St Paul

Here's a list of all forms included in your policy, on the date shown below. These forms are listed in the same order as they appear in your policy.

Title	Form Number	Edition Date
Global Executive Support Service Agreement	D0069 ✓	01-98
Global Companion Policy Introduction	D0068 ✓	01-98
Policy Form List	40705 ✓	05-84
Global Companion Policy General Rules	D0066 ✓	01-98
Technology Global Companion What To Do If You Have A Loss	G0279 ✓	01-02
Technology Global Companion Commercial General Liability Protection Coverage Summary	G0187 ✓	10-98
Commercial General Liability Protection Estimated Premium Summary	43492 ✓	04-94
Technology Global Companion Commercial General Liability Protection	G0186 ✓	01-02
Asbestos Exclusion Endorsement	G0468 ✓	03-02
Foreign Voluntary Workers Compensation And Employers Liability Protection Coverage Summary	SP167 ✓	01-98
Foreign Voluntary Workers Compensation And Employers Liability Protection	SP166 ✓	01-98
Global Companion Policy Auto Liability And Auto Medical Payments Protection Coverage Summary	A0098 ✓	01-98
Global Companion Policy Auto Liability Protection	A0095 ✓	01-98

Name of Insured
E. PIPHANY, INC.

Policy Number TE09405603

Effective Date 06/24/02

Processing Date 07/31/02 17:17 002

The St Paul

GLOBAL EXECUTIVE SUPPORT SERVICE AGREEMENT**The St. Paul**

This agreement provides global executive support services to your employees who travel outside the United States for your business. There are, of course, limitations and restrictions which apply to this service agreement. As a result, this service agreement should be read carefully to determine the extent of the services provided to you and your employees.

Table of Contents	Page	Definitions	6
About This Service Agreement	1		
Medical Assistance Services	2	About This Service Agreement	
Hospital Admission Deposit	2	The Global Executive Support Services provided below are not insurance, and are available to your "employees" engaged in "temporary travel," including their accompanying spouse, child(ren), or other companion(s).	
Medical Monitoring	2		
Dispatch Of A Doctor Or Specialist	2	Global Executive Support Services includes Medical Assistance, Personal Assistance, and Travel Assistance, as described below.	
Emergency Medical Evacuation	2	"Employees" may contact the St. Paul Alarm Center at any hour of any day. The St. Paul Alarm Center may direct an "employee" to contact a Regional Alarm Center nearer to the "employee's" location. The St. Paul Alarm Center is operated by International SOS Assistance, Inc., a third party provider of the Global Executive Support Services Program described below.	
Medically Supervised Repatriation	2		
Repatriation Of Mortal Remains	3	We will give you five (5) service cards at the beginning of each new or renewal "program service period" of this Global Executive Support Services Program. These service cards will explain how to reach the St. Paul Alarm Center. It is your responsibility to distribute the service cards to your "employees" who may require global executive support services during "temporary travel." You may ask us for additional cards as they are required by you.	
Personal Assistance Services	3		
Pre-Trip Medical Referral Information	3		
Emergency Medication	3		
Embassy And Consular Information	3		
Lost Document Assistance	3		
Emergency Message Transmission	3		
Emergency Cash Advance	3		
Legal Access	3		
Translations And Interpreters	3		
Lost Baggage Assistance	4		
Currency Exchange Rates	4		
Weather Information	4		
Benefits Verification And Claims Assistance	4		
Travel Assistance Services	4		
Emergency Family Travel Arrangements	4		
Transportation To Join Disabled "Employees"	4		
Return Of Minor Children	4		
Return Of Traveling Companion	4		
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Services And Cost Restrictions	4		
Destinations Covered	5		
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Errors And Omissions	5		
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provided below are requested. We will contact the designated individual(s) to verify "employee" information and eligibility. You must give us timely notice of any changes in the contact person(s).

Medical Assistance Services

The St. Paul Alarm Center is staffed with trained multi-lingual personnel, including doctors on round-the-clock call for emergency medical consultation and assistance as described below. This center handles requests for referrals to English speaking doctors, hospitals, and specialists, as well as all aspects of coordinating any emergency medical evacuations.

Medical Assistance Services will pay for those expenses as described below, up to \$1,000,000, in any one "program service period," regardless of the number of "employees" for which any services are provided. If total expenses incurred for any Medical Assistance Services provided exceed \$ 1,000,000, in any one "program service period," you will reimburse us or our designee for those amounts in excess of \$ 1,000,000..

Hospital Admission Deposit

We will either guarantee the payment of, or wire, any required emergency hospital admission deposit up to \$ 5,000. You or your "employee" will repay any such deposit to us or our designee within forty-five (45) days (without interest). If you fail to repay us such deposits in the time allowed, or we are required to pay on our guarantee, then such moneys become a service rendered, and we have the additional rights as explained under the section "Transfer of Rights of Recovery Against Others to Us."

Medical Monitoring

We will monitor the "employee's" condition when hospitalized abroad, and will use our best efforts to report regularly on the "employee's" condition to the "employee's" family and/or employer.

Dispatch Of A Doctor Or Specialist

If we determine, based on information available to us, that an "employee's" condition cannot be adequately assessed to evaluate the need for evacuation, we will dispatch a doctor or specialist to the "employee's" location. We will pay the cost of the doctor's or specialist's travel to the "employee's" location, but we will not pay the cost of any medical services that are rendered by the doctor or specialist at the location.

Emergency Medical Evacuation

When adequate medical facilities are not available locally, we will arrange and pay for emergency medical evacuation of the "employee," under medical supervision, to the nearest location with adequate facilities.

We will also assist in making the arrangements, but not pay for any associated costs, of one (1) family member or other traveling companion to continue to accompany the "employee" during evacuation, if it is reasonably possible for that person to accompany the "employee."

The "employee" and any accompanying family member or other traveling companion may be required to release us or our third party service provider from liability during emergency evacuation. Our obligation is limited to providing one (1) emergency evacuation attributable to any single medical condition of an "employee."

Medically Supervised Repatriation

If we determine, based on information available to us, that it is medically advisable to repatriate the "employee" to a facility which is in the country of residence of the "employee," or a location in the country of which the "employee" is a citizen, following stabilization, we will make the arrangements and pay for repatriation of the "employee," under medical supervision.

We will also assist in making the arrangements, but not pay any associated costs, of one (1) family member or other traveling companion to continue to accompany the "employee" during repatriation under medical supervision, if it

is reasonably possible for that person to accompany the "employee"

The "employee" and any accompanying family member or other traveling companion may be required to release us or our third party service provider from liability during emergency repatriation. Our obligation is limited to providing one (1) emergency repatriation attributable to any single medical condition of an "employee."

Repatriation Of Mortal Remains

In the event of an "employee's" death while traveling, we will provide every assistance possible to obtain necessary clearances and arrange for the return of the mortal remains to a location which is consistent with the known reasonable wishes of the "employee" or of the "employee's" family. We will pay reasonable expenses associated with such return, including the cost of embalming to meet any applicable requirements.

We will also assist in making arrangements, but not pay for any associated costs, of one (1) family member or other traveling companion to continue to accompany the mortal remains of the deceased "employee" during repatriation, if it is reasonably possible for that person to accompany the remains.

Personal Assistance Services

Pre-Trip Medical Referral Information

We will provide pre-trip medical referral information to "employees" regarding countries and regions to be visited, including local English speaking doctors, and/or addresses and phone numbers of hospitals.

Emergency Medication

Should an "employee" require prescription medication that is not available locally, we will make arrangements for the transportation of such medication to the "employee," when possible and legally permissible, upon the request of the prescribing physician. The "employee" is responsible for the cost of the medication and the transportation.

Embassy And Consular Information

We will provide "employees" with contact information for embassies and consulates worldwide.

Lost Document Assistance

If an "employee" loses important travel documents, including a passport and credit cards, while traveling, we will assist with obtaining their replacements. We will not pay for the cost of obtaining these replacements.

Emergency Message Transmission

We will make reasonable efforts to receive and transmit emergency messages between the family and/or employer of an "employee."

Emergency Cash Advance

We will, whenever possible, provide "employees" with a cash advance of up to \$ 5,000. in local currency for any medical, legal, or any other emergency situations related to any of the services and/or assistance provided by this Global Executive Support Services program. You or your "employee" will repay any such cash advances to us or our designee within forty-five (45) days (without interest). If you or your "employee" fail to repay to us such advances, then such moneys becomes a service rendered, and we have the additional rights set out under the heading "Transfer of Rights of Recovery Against Others to Us."

Legal Access

We will provide "employees" with an introduction to local attorneys available during regular working hours. Assistance will also be provided in obtaining bail bonds in those areas where such bonds are customarily issued. "Employees" are responsible for paying for any contracted legal fees.

Translations And Interpreters

We will provide personal emergency translation services through the 24 hour St. Paul Alarm Center and Regional Centers, as



well as referrals to interpreter services. When a personal presence or other customized interpreter services are required, the "employee" will be responsible to pay locally the costs of such interpreter services.

Lost Baggage Assistance

We will assist "employees" with the proper reporting procedures if their baggage is lost, stolen, or delayed while traveling on a common carrier. We will also maintain contact with the appropriate companies or authorities to help resolve the problem.

Currency Exchange Rates

We will provide to the "employee" general currency exchange rates for those countries to which they are traveling. These exchange rates are for general planning purposes only, and are not intended to be used for exact funds exchange for any specific transactions at a specific time or date.

Weather Information

We will provide to the "employee" weather information of a general nature for the location(s) where travel is anticipated. We will not provide any weather information for a specific location on a specific date, nor can we be held responsible if any weather is outside of normal patterns.

Benefits Verification And Claims Assistance

We will assist "employees" in verifying their medical insurance benefits when hospitalized overseas, and in coordinating overseas claims procedures with their health insurance, and any applicable Worker's Compensation insurance, as you direct.

Travel Assistance Services

Emergency Family Travel Arrangements

We will coordinate emergency travel arrangements for family members who need to join a hospitalized "employee." The costs of these travel services are the responsibility of the traveler(s).

Transportation To Join Disabled "Employees"

If an "employee" is traveling alone and is hospitalized for more than seven (7) days, we will arrange, but not pay the cost of, economy round trip air fare to the place of hospitalization, for a person chosen by the "employee."

Return Of Minor Children

If dependent children are left unattended as a result of an "employee's" accident or illness, we will arrange, but not pay the cost of, economy one way air fare to their place of residence. Qualified attendants will also be arranged, when required, but we will not pay the cost of such attendants.

Return Of Traveling Companion

When we hospitalize or medically evacuate an "employee," and a traveling companion's air ticket is no longer usable, we will arrange, but not pay the cost of, economy one way air transportation for the companion to their original departure point.

Return Of Vehicle

In the event of an "employee's" hospitalization or medical evacuation, we will arrange, but not pay the cost, to have the "employee's" unattended vehicle returned to the rental agency, or the "employee's" current principal residence.

Services And Cost Restrictions

We are not responsible for any services or costs:

- Provided outside the "program service period." However, if, before the end of the "program service period," we have begun to assist an "employee" with any of the services described under the heading "Medical Assistance Services," we will continue to provide those services for up to seven (7) days after the end of the "program service period."
- Provided without our authorization and/or intervention.
- Provided for which no charge is normally made.

- If the original or ancillary purpose of the "employee's" trip is to obtain medical treatment.
- If the trip is made against the advices of a physician.
- For intentionally self-inflicted injuries, suicide, or any attempt thereat, regardless of mental condition.
- As a result of any service in the Armed Forces of any country.
- As a result of the use of alcohol, drugs, or any controlled substance, unless it is prescribed by a physician.
- As a result of aerial flight, except as a fare paying passenger on a regular scheduled airline or licensed chartered aircraft.
- As a result of any participation in any professional sports, or high risk amateur and/or recreational activities, including but not limited to, mountaineering, scuba diving, sky diving, auto racing, bungee jumping, etc..
- As a result of commission of, or the attempt to commit, an illegal act.
- As a result of the active participation in war (whether declared or not), invasion, acts of foreign enemies, hostilities, civil war, rebellion, riot, revolution, insurrection, or as a direct result of nuclear reaction or radiation.
- For routine or minor medical problems, tests, and exams related to pregnancy.
- For transportation for an "employee's" vehicle that involves any intercontinental and/or marine transportation.
- For pregnancies, except in the case of a major, vital complication for the mother and/or baby.
- Which are requested after we have paid the maximum limit of covered expenses, or after we have incurred the maximum limit of covered expenses.

No services shall be available for any "employee" if such services are required as a result of mild lesions, simple fractures, or mild illness which can be treated by local doctors, and which do not prevent the "employee" from continuing his/her trip or returning home.

Destinations Covered

We will provide the Global Executive Support Services described above, anywhere in the world, except for the United States of America, Cuba, Iran, Iraq, Libya, North Korea, Sudan, and any other country which the United States Government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries. But we will not consider such countries as being prohibited if such trade sanctions, embargoes, or regulations are removed for any reason by the United States Government, or no longer operate to prevent the transaction of business with or within these countries.

General Conditions

Errors And Omissions

We are not liable for any act or omission by a local doctor or attorney who is not our employee, nor the employee of a third party provider of the support services described herein.

We are not liable for the failure to provide, or for the delay in providing services when such failure or delay is caused by conditions beyond our control, including but not limited to restricted flight conditions, weather, Acts of God, strike, riot, civil commotion, war or uprising, or where rendering of any services is prohibited by local laws or regulations.

Transfer Of Rights Of Recovery Against Others To Us

If you or the "employee" to whom we render assistance have any rights to recover all or any part of the cost of any services rendered under this program from any other person(s) or organization(s), including rights to recover under any "Worker's Compensation Law," health plan or insurance policies, we are entitled to an assignment of those rights to the extent of our benefit payments. You and your "employee" shall transfer those rights to us, and cooperate with us as may be necessary to enforce such rights. You and your "employee" agree to sign any papers, deliver them to us, and



do anything else that we may reasonably require to help us pursue such rights.

Suits Against Us

You agree not to bring suit against us unless you have complied with all the terms of this policy. Any such suit must be brought within two (2) years after the support services are rendered. No person or organization has any right to bring us into any action to determine your liability.

Return To Work

You have the responsibility for the decision of whether or not an "employee" returns to work. You are responsible for obtaining any medical releases and to determine an "employee's" suitability to travel and/or resume work or not. The decision and results thereof are solely the responsibility of the "employee," you, and/or the "employee's" attending physician. We are not involved in such decisions, and we have no liability arising out of an "employee's" return to work.

Services Not Covered

You agree to reimburse us or our designee for services rendered on your behalf which are not covered by this program, when such services are requested or approved by a corporate officer whose name you have given us to contact, or when such services are provided in good faith to any "employee" not covered by reason of cancellation of this program.

Definitions

"Employees" means any person working for you at your workplaces, including any voluntary workers, or independent contractors with whom you have a written contract, anywhere in the World, except those countries for which there is a United States governmental embargo or sanction prohibiting the transaction of business with or within that country.

"Temporary Travel" means any travel outside of the country of an employee's permanent workplace, for the purpose of conducting your business. Such travel will not require an employee to be away from their permanent workplace for a period longer than ninety (90) consecutive days on any one trip, or to spend more than 180 days per year outside the country of an employee's permanent workplace. Temporary Travel includes personal travel, but only if such personal travel is incidental to the travel for the purposes of conducting your business.

"Program Service Period" means from the effective date of the policy to which this Global Executive Support Services Program is attached until the expiration date of the policy, including any extensions and/or renewals of the policy. If the policy is canceled for any reason before its expiration date, then The Global Executive Support Services Program will end as of the effective date of the policy cancellation.

**GLOBAL COMPANION POLICY
GENERAL RULES****The St Paul**

These rules apply to the entire policy unless you're notified otherwise.

Special Rights And Duties Of The First Named Insured

You agree that when more than one insured is named in the introduction, the first named insured has special rights and duties. These rights and duties are explained in the following General Rules:

- Premiums.
- Cancellation.
- Policy Changes.

Your Policy Period

Insuring agreements in this policy begin at 12:01 a.m., standard time, on the effective date. If this policy replaces policies ending at noon, rather than 12:01 a.m., coverage begins at noon when the old policy ends.

Standard time refers to the time at the address of the named insured shown in the Introduction.

Insuring agreements added to this policy after its effective date begin on the effective date of the added agreement.

Coverage ends at 12:01 a.m., standard time, on the expiration date. If all or part of this policy is canceled for any reason before that date, that coverage will end at 12:01 a.m., standard time, on the cancellation date.

Premiums

We compute the premium you pay for this policy using information available at the time. So, all or part of your premium may be based on estimates. If estimates are used, we'll compute your actual premium when complete information is available at the end of the policy period. If it's more than you've paid, you'll owe us the difference. But you won't pay less than any minimum annual premium agreed on. The first named insured is responsible for paying

all premiums and will be the one to whom we'll pay any return premiums.

You must keep accurate records of the information we'll need to compute your premium. Your agent can explain the type of records we'll need. The first named insured agrees to send copies of these records at the end of each policy period - or any other time we request them.

Our Right To Inspect And Audit

You agree to let us inspect your property and business operations during normal business hours while this policy is in force. We're not, however, required to make inspections. Nor will we guarantee that your property or operations are safe, or that they conform to any laws, codes, standards or regulations. This rule also applies to any organization which makes insurance inspections, surveys, reports or recommendations for us.

You also agree to let us examine and audit your financial books and records that relate to this insurance at any time up to 3 years after this policy ends.

Policy Changes

This policy contains all the agreements between you and us concerning this insurance. The first named insured is authorized to make changes in this policy with our consent. This policy can only be changed by a written form included as part of the policy. This form must be signed by one of our authorized representatives.

We make changes in our standard insurance policy forms from time to time. While your coverage is in force we can make any change in the form of this policy that broadens or extends your coverage. If we do, and the change can be added to your policy without increasing the premium, you'll



automatically receive the benefit of the extended or broadened coverage.

Assignment And Transfers

Neither you nor anyone else covered under this policy can assign or turn over your interest in it without our written consent attached to the policy.

However, there is one exception. If you are an individual named insured and you die, your rights and duties will be transferred to your legal representative; but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties concerning that property.

Cancellation

The first named insured can cancel this policy in whole or part at any time.

To cancel, the first named insured must deliver the policy or the part to be canceled to us or to any of our authorized agents. If this isn't possible notify us by mail and include the date coverage is to end. We'll refund the unused premium to the first named insured, less a charge for early cancellation.

If we cancel this policy, we'll mail or deliver a cancellation notice to the first named insured at least 30 days before coverage will end: 10 days if we're canceling for nonpayment of premium. If notice is mailed, proof of mailing to the first named insured's last mailing address known to us will be considered proof you were notified. Any unused premium will be refunded to the first named insured as soon as possible. However, the cancellation will be effective whether or not we've made or offered a refund.

Recovering Damages From A Third Party

Any person protected under this policy may be able to recover all or part of a loss from someone other than us. Because of this, each protected person must do all that's possible to preserve any right of recovery available. If we make a payment

under this policy that right of recovery will belong to us. If we recover more than we've paid, the excess will belong to the person who had the loss. But we'll deduct our recovery expenses first.

Fraud And Misrepresentation

This policy is void if you or any other protected person hide any important information from us, mislead us, or attempt to defraud or lie to us about any matter concerning this insurance - either before or after a loss. Of course, everyone makes mistakes. Unintentional errors or omissions won't affect your rights under this policy.

Appraisal Of Property Disputes

If your policy includes property insurance and agreement can't be reached on the amount of a property loss or the value of the property, the following procedure will be used:

1. One of us will make a written demand for an appraisal.
2. Each will select a competent and impartial appraiser and notify the other of the selection within 30 days of the demand.
3. The appraisers will select a competent and impartial umpire. If they can't agree on an umpire, either may ask that one be selected by a judge of a court having jurisdiction.
4. The appraisers will state separately the amount of the loss and the value of the property. If they don't agree, they'll submit their appraisals to the umpire. Agreement of two out of three will be binding.

You'll pay your appraiser and we'll pay ours. Other costs of the appraisal and the umpire will be shared equally by you and us.

If we submit to an appraisal, we'll still retain our right to deny the claim.

Lawsuits Against Us

No one can sue us to recover under this policy unless all of its terms have been lived up to.

If your policy includes property insurance. Any lawsuit to recover on a property claim must begin within 2 years after the date on which the direct physical loss or damage occurred.

If your policy includes liability insurance. No one can sue us on a liability claim until the amount of the protected person's liability

has been finally decided either by a trial or by a written agreement signed by the protected person, by us and by the party making this claim. Once liability has been determined by judgment or by written agreement, the party making the claim may be able to recover under this policy, up to the limits of coverage that apply. But that party can't sue us directly or join us in a suit against the protected person until liability has been so determined.

If the protected person or his or her estate goes bankrupt or becomes insolvent, we'll still be obligated under this policy.

**TECHNOLOGY GLOBAL COMPANION
WHAT TO DO IF YOU HAVE A LOSS**
The St. Paul
Claim Call Center

If you are unable to contact your agent/broker or our office, the following toll free number is available 24 hours a day:

Phone: 1-800-787-2851

When This Policy Provides Property Protection

If there is a property loss that may be covered by property protection provided in this policy you must:

1. Notify the police if a law may have been broken.
2. Tell us or our agent what happened as soon as possible. Include the time and place of the event, a description of the property and the names and addresses of any witnesses.
3. Do what is reasonable and necessary to protect covered property from further damage. Keep a record of your expenses for consideration in your claim.
4. If feasible, separate the damaged property from the undamaged and make an inventory of the damaged items.
5. Cooperate with us in the investigation and settlement of the claim. Permit us to inspect the damaged property and any records pertaining to your loss as many times as may be required. Permit us to take samples of damaged and undamaged property for testing and analysis.
6. Allow us to examine you or any other insured under oath while not in the presence of any other insured. We may do this whenever reasonably required about any matter relating to this Insurance or the claim. Any insured we examine must sign a copy of their answers.
7. Send us a signed, sworn proof of loss containing the information we need to resolve the claim. You must do this within 60 days after our request. We'll supply the forms. We'll pay within 30 days after we reach agreement with you.

When This Policy Provides Liability Protection

If an accident, error, event, offense, or wrongful act happens that may involve liability protection provided in this policy, you or any other protected person involved must:

1. Notify the police if a law may have been broken.
2. Tell us or our agent what happened as soon as possible. Do this even though no demand for damages or other relief has been made against you or any other protected person, but you or another protected person is aware of having done something that may later result in a demand for damages or other relief. This notice of loss should include all of the following:
 - The time and place of the accident, error, event, offense, or wrongful act;
 - The protected person involved;
 - The specific nature of the accident, error, event, offense, or wrongful act, including the type of demand for damages or other relief that may result; and
 - The names and addresses of any witnesses and injured people.

Notice of loss means notice of an accident, error, event, offense, or wrongful act, other than a written demand or lawsuit, given by or on behalf of:

- you or any other protected person involved; or
 - the injured or damaged person or organization;
- to us or our agent, in sufficient detail to identify you.

3. Send us a copy of all written demands. Also send us a copy of all legal documents if someone starts a lawsuit.



4. Cooperate and assist us in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses.
5. Not assume any financial obligation or pay out any money without our consent. But this rule doesn't apply to first aid given to others at the time of an accident.

Knowledge of an accident, error, event, offense, or wrongful act. We won't consider the knowledge of an accident, error, event, offense, or wrongful act by any of your employees to be your knowledge of an accident, error, event, offense, or wrongful act unless you, or any of the following, receive notice or have knowledge of that accident, error, event, offense, or wrongful act:

- Any of your partners or co-venturers if you are a partnership or joint venture.
- Any of your members if you are a limited liability company.
- Any of your executive officers if you are a corporation.

Failure of one of your employees, other than any of your:

- partners or co-venturers if you are a partnership or joint venture;
- members if you are a limited liability company; or
- executive officers if you are a corporation

to provide notice of a known accident, error, event, offense, or wrongful act won't affect your insurance under this policy.

If you report any accident, error, event, offense, or wrongful act, as a Workers Compensation claim, and that claim later develops into a liability claim which may involve coverage under this policy, the failure to report such accident, error, event, offense, or wrongful act to us or our agent will not violate this policy's rules if you notify us or our agent immediately as soon as you become aware of the fact that the accident, error, event, offense, or wrongful act is likely to involve this policy.

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The **St Paul**
**TECHNOLOGY GLOBAL COMPANION
COMMERCIAL GENERAL LIABILITY PROTECTION
COVERAGE SUMMARY**

This Coverage Summary shows the limits of coverage that apply to your Technology Global Companion Commercial General Liability Protection. It also lists those endorsements, if any, that must have certain information shown for them to apply.

Limits Of Coverage

General total limit.	\$2,000,000	✓
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Products and completed work total limit.	\$2,000,000	✓
---	--------------------	---

Personal injury each person limit.	\$1,000,000	✓
---	--------------------	---

Advertising injury each person limit.	\$1,000,000	✓
--	--------------------	---

Each event limit.	\$1,000,000	✓
Premises damage limit.	\$1,000,000	✓
Medical expenses limit.	\$10,000	✓

Named Endorsement Table

Important Note: Only endorsements that must have certain information shown for them to apply are named in this table. The required information follows the name of each such endorsement. Other endorsements may apply too. If so, they're listed on the Policy Forms List.

Name of Insured
E.PIPHANY, INC.
Policy Number TE09405603

Effective Date 06/24/02

Processing Date 07/23/02 16:45 001

The **St Paul**

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**COMMERCIAL GENERAL LIABILITY PROTECTION
ESTIMATED PREMIUM SUMMARY**The **St Paul**

This summary applies to your Commercial General Liability Protection.

What This Summary Does

All or part of your Commercial General Liability Protection premium is estimated. It's based on estimated exposure. This summary shows when and how we'll figure your actual premium.

Exposure means the amount of premium basis developed for each rating classification shown in the Estimated Premium Table.

When we'll figure your actual premium. We'll figure your actual premium at the end of the policy year. If an interim audit period is shown, we'll also figure your premium at the end of each such period during the policy year.

You agree to promptly provide your actual exposure for the policy year, and if shown, each interim audit period, when we request them or make a physical audit.

How we'll figure your actual premium at the end of the policy year. We'll multiply your actual exposure by the rates shown in the Estimated

Premium Table. This will determine your actual premium for the policy year. If it's more than the premium we previously charged, you'll pay the balance when due. If it's less, you'll get credit for the difference. But you won't pay less than the total of the highest minimum premium for each coverage that's subject to a rating classification with a minimum premium and an actual exposure for the policy year. We'll figure the total by using only the highest minimum premium that applies to each such coverage.

How we'll figure your actual premium during the policy year. If an interim audit period is shown, we'll multiply your actual exposure by the rates shown in the Estimated Premium Table. This will determine your actual premium for that period. You'll pay this premium when due, in addition to any other premium we previously charged.

Other Terms

All other terms of your policy remain the same.

Interim audit period: ANNUAL

Estimated Premium Table

The following applies from 06/24/02 to 06/24/03

Coverage: PREMISES/OPERATIONS

Rating classification:
SOFTWARE DEVELOPERS -ONSITE DEVELOPMENT AND CONSULTING

Code number: 9AACH-001

Premium basis: GROSS RECEIPTS - FOREIGN Estimated
Exposure: 22,650,000

Rate: .356 The rate applies per: 1,000

Coverage minimum premium: \$99.00

State: IC Territory

Name of Insured
E.PIPHANY, INC.

Policy Number TE09405603
Processing Date 07/23/02 16:45 001

Effective Date 06/24/02

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The following applies from to

Coverage:

Rating classification:

Code number:

Premium basis:

Estimated
Exposure:

Rate:

The rate applies per:

Coverage minimum premium:

State:

Territory:

The following applies from to

Coverage:

Rating classification:

Code number:

Premium basis:

Estimated
Exposure:

Rate:

The rate applies per:

Coverage minimum premium:

State:

Territory:

The following applies from to

Coverage:

Rating classification:

Code number:

Premium basis:

Estimated
Exposure:

Rate:

The rate applies per:

Coverage minimum premium:

State:

Territory:

**TECHNOLOGY GLOBAL COMPANION
COMMERCIAL GENERAL LIABILITY PROTECTION**
The **St Paul**

This insuring agreement provides general liability protection for your business activities outside of the United States of America, its territories and possessions, Puerto Rico, and Canada. There are, of course, limitations and exclusions throughout this agreement that apply to that protection. As a result, we recommend that you read this agreement carefully to determine the extent of the coverage provided to you and other protected persons.

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What This Agreement Covers

Bodily injury and property damage liability.

We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury or property damage that:

- happens while this agreement is in effect; and
- is caused by an event.

Protected person means any person or organization that qualifies as a protected person under the Who Is Protected Under This Agreement section.

Bodily injury means any physical harm, including sickness or disease, to the physical health of other persons.

We'll consider any of the following that happens at any time to be part of such physical harm, sickness, or disease, if it results in or from such physical harm, sickness, or disease:

- Mental anguish, injury, or illness.
- Emotional distress.
- Care, loss of services, or death.

We'll consider any bodily injury that's a continuation, change, or resumption of previously known bodily injury to happen before this agreement begins if such continuation, change, or resumption would otherwise be covered by this agreement because of a continuous, multiple, or other coverage trigger required under the law that applies.

Of course, if there's a continuation, change, or resumption, after this agreement ends, of bodily injury that:

- isn't previously known bodily injury; and
- happens while this agreement is in effect; we'll consider such continuation, change, or resumption to also happen while this agreement is in effect if that would be the result because of a continuous, multiple, or other coverage trigger required under the law that applies.

Previously known bodily injury means bodily injury that happened before this agreement begins and was known by you or any described individual protected person before this agreement begins as a result of any of the following at that time:

- You or any described individual protected person reporting all or part of that bodily injury to us or any other insurer.
- You or any described individual protected person receiving a claim or suit for all or part of that bodily injury.
- Any described individual protected person witnessing, or being told of, the beginning, or any change, continuation, or resumption, of all or part of that bodily injury.

Described individual protected person means any of the following:

- You or your spouse if you are an individual.
- Any of your partners or co-venturers that are individuals, or their spouses, if you are a partnership or joint venture.
- Any of your members or managers if you are a limited liability company.
- Any of your directors or executive officers if you are a corporation or other organization.
- Any of your employees who is or acts as your insurance or risk manager or holds a position in your insurance, risk management, or legal department.

Property damage means:

- physical damage to tangible property of others, including all resulting loss of use of that property; or
- loss of use of tangible property of others that isn't physically damaged. For example:

One of your employees accidentally causes a fire in your premises. The fire department responds and orders nearby businesses to close for safety reasons

while it fights the fire. Your premises is heavily damaged by the fire. But none of the nearby businesses are physically damaged. As a result, we'll consider the period of time those businesses are closed due to your fire to be loss of use of tangible property of others that isn't physically damaged.

We'll consider all physical damage to tangible property of others that's a continuation, change, or resumption of previously known physical damage to tangible property of others to happen before this agreement begins if such continuation, change, or resumption would otherwise be covered by this agreement because of a continuous, multiple, or other coverage trigger required under the law that applies.

Of course, if there's a continuation, change, or resumption, after this agreement ends, of physical damage to tangible property of others that:

- isn't previously known physical damage to tangible property of others; and
- happens while this agreement is in effect; we'll consider such continuation, change, or resumption to also happen while this agreement is in effect if that would be the result because of a continuous, multiple, or other coverage trigger required under the law that applies.

We'll consider all loss of use of:

- damaged tangible property to happen at the time of the physical damage that caused it; and
- undamaged tangible property to happen at the time of the event that caused it.

Tangible property does not include data.

Previously known physical damage to tangible property of others means physical damage to tangible property of others that happened before this agreement begins and was known by you or any described individual protected person before this agreement begins as a result of any of the following at that time:

- You or any described individual protected person reporting all or part of that property damage to us or any other insurer.

- You or any described individual protected person receiving a claim or suit for all or part of that property damage.
- Any described individual protected person witnessing, or being told of, the beginning, or any change, continuation, or resumption, of all or part of that property damage.

Event means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

We explain the terms:

- claim and suit in the Right and duty to defend a protected person section;
- executive officer and other organization in the Corporation or other organization section; and
- employee in the Employees and volunteer workers section.

Personal injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your business activities; and
- is caused by a personal injury offense committed while this agreement is in effect.

Personal injury means injury, other than bodily injury or advertising injury, that's caused by a personal injury offense.

Personal injury offense means any of the following offenses:

- False arrest, detention, or imprisonment.
- Malicious prosecution.
- Wrongful entry into, or wrongful eviction from, a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor, or owner of that room, dwelling, or premises.
- Invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, if such invasion is committed by or for the landlord, lessor, or owner of that room, dwelling, or premises.
- Libel, or slander, in or with covered material.

The St. Paul

- Making known to any person or organization covered material that disparages the business, premises, products, services, work, or completed work of others.
- Making known to any person or organization covered material that violates a person's right of privacy.

Covered material means any material in any form of expression, including material made known in or with any electronic means of communication, such as the Internet.

Advertising injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered advertising injury that:

- results from the advertising of your products, your work, or your completed work; and
- is caused by an advertising injury offense committed while this agreement is in effect.

We won't consider advertising, borders, or frames for or of others, or links for or to others, that are on or in your website to be advertising of your products, your work, or your completed work.

Advertising injury means injury, other than bodily injury or personal injury, that's caused by an advertising injury offense.

Advertising injury offense means any of the following offenses:

- Libel, or slander, in or with covered material.
- Making known to any person or organization covered material that disparages the business, premises, products, services, work, or completed work of others.
- Making known to any person or organization covered material that violates a person's right of privacy.
- Unauthorized use of any advertising material, or any slogan or title, of others in your advertising.

Advertising means attracting the attention of others by any means for the purpose of:

- seeking customers or supporters; or
- increasing sales or business.

Advertising material means any covered material that:

- is subject to copyright law; and
- others use and intend to attract attention in their advertising.

Slogan means a phrase that others use and intend to attract attention in their advertising.

But we won't consider slogan to include a phrase used as, or in, the name of:

- any person or organization, other than you; or
- any business, or any of the premises, products, services, work, or completed work, of any person or organization, other than you.

Title means a name of a literary or artistic work.

We explain the terms:

- covered material in the Personal injury liability section; and
- your products, your work, and your completed work in the Products and completed work total limit section.

Medical expenses. We'll pay covered medical expenses that result from bodily injury caused by an event that happens while this agreement is in effect, even if the protected person isn't legally required to pay such expenses.

Medical expenses means the reasonable expenses incurred by any person or organization for necessary medical services received by a person anytime within three years of the beginning date of an event that causes that person to sustain bodily injury.

Medical services includes:

- first aid received at the time of an event;
- ambulance and emergency care services;
- dental, hospital, medical, nursing, surgical, x-ray, and other health care professional services;
- artificial limbs and organs; and
- funeral services.

We explain the term health care professional services in the Employees and volunteer workers section.

Right and duty to defend a protected person.

We'll have the right and duty to defend any protected person against a claim or suit for injury or damage covered by this agreement. We'll have such right and duty even if all of the allegations of the claim or suit are groundless, false, or fraudulent. But we won't have a duty to perform any other act or service.

We'll have the right to investigate any event, offense, claim, or suit to the extent we believe is proper. We'll also have the right to settle any claim or suit within:

- any applicable deductible; or
- the available limits of coverage.

Our duty to defend protected persons ends when we have used up the limits of coverage that apply with the payment of:

- judgments;
- settlements; or
- medical expenses.

However, if we're prevented by law or other reasons from investigating or defending any claim or suit made or brought for covered injury or damage against any protected person, you agree to take whatever steps are necessary to promptly and properly investigate and defend it. Such investigation and defense may be made by or for you. But they must be done under our supervision. And we must authorize any settlement before it is made. In addition, we agree to repay reasonable expenses you incur for such investigation, defense, or settlement. But our duty to make such payments ends when we have used up the limits of coverage that apply with the payment of judgments, settlements, or medical expenses. Any repayment we make will be in the currency of the United States of America at the rate of exchange prevailing on the date such claim or suit is first reported to us.

Claim means a demand that seeks damages.

Suit means a civil proceeding that seeks damages. It includes:

- an arbitration proceeding for damages to which the protected person must submit, or submits with our consent; and
- any other alternative dispute resolution proceeding for damages to which the protected person submits with our consent.

Injury or damage means:

- bodily injury, personal injury, or advertising injury; or
- property damage.

Offense means any:

- personal injury offense; or
- advertising injury offense.

Duty to indemnify. We'll indemnify you when we are prevented by law or other reasons from paying amounts any protected person is legally required to pay as damages for covered injury or damage.

Additional payments. We'll have the duty to make only the additional payments shown below in connection with any claim or suit under this agreement against a protected person when we:

- investigate or settle the claim or suit; or
- defend the protected person against the claim or suit.

These payments are in addition to the limits of coverage.

Our duty to make additional payments ends when we have used up the limits of coverage that apply with the payment of:

- judgments;
- settlements; or
- medical expenses.

If the laws or rules of a country or jurisdiction prohibit us from providing any of the amounts described in this section, we'll repay the protected person for any such amounts that the protected person incurred.

Our expenses. We'll pay all expenses we incur.

Bail bonds. We'll pay up to \$2,500 of the cost of bail bonds that are required because of accidents or violations of traffic laws.



But only if the accidents or violations result from the use of a vehicle to which this agreement applies. We don't have to furnish such bonds.

Bonds to release property. We'll pay the cost of bonds to release property that's being used to secure a legal obligation. But only for bond amounts within the available limit of coverage. We don't have to furnish such bonds.

Expenses incurred by protected persons. We'll pay all reasonable expenses that any protected person incurs at our request while helping us investigate or settle, or defend a protected person against, a claim or suit. But we won't pay more than \$500 per day for earnings actually lost by the protected person because of time taken off from work.

Taxed costs. We'll pay all costs taxed against any protected person for covered injury or damage in a suit.

Prejudgment interest. We'll pay the interest that accumulates before a judgment and is awarded against the protected person on that part of a judgment we pay. But if we make a settlement offer to pay the available limit of coverage, we won't pay the prejudgment interest that accumulates after the date of our offer.

Postjudgment interest. We'll pay all interest that accumulates on the full amount of that part of a judgment for which we make a payment. But only from the date of the judgment to the date we pay, or deposit in court, the limit of coverage that applies to the judgment.

Appeal bonds. If we have the duty to appeal a judgment that includes damages covered by this agreement, and you agree we can appeal that judgment, we'll pay the cost of any appeal bond required for that appeal. But only for that part of the judgment that is for damages covered by this agreement and is within the available limit of coverage. However, we'll pay, or reimburse the protected person, for the cost of a higher appeal bond amount if we're required to do so under the law that applies. But we won't be the principal under any such bond. Nor do we have to furnish any appeal bond. The results of an appeal won't

change the limits of coverage that apply under this agreement.

Right to appeal a judgment against a protected person. We'll have the right to appeal a judgment that we don't have a duty to appeal. But only if the judgment:

- includes damages for injury or damage covered by this agreement;
- is awarded in a suit for which we defend a protected person; and
- is awarded against the protected person.

If we appeal such a judgment, we'll pay the following that result directly from that appeal:

- All expenses we incur.
- All reasonable expenses that any protected person incurs at our request while helping us with the appeal, other than the cost of appeal bonds.
- The cost of any required appeal bond. But only for that part of the judgment that is for damages covered by this agreement and is within the available limit of coverage. However, we'll pay, or reimburse the protected person, for the cost of a higher appeal bond amount if we're required to do so under the law that applies. But we won't be the principal under any such bond. Nor do we have to furnish any appeal bond.
- All postjudgment interest that accumulates on the full amount of the judgment. But only from the date of the judgment to the date we pay, or deposit in court, the limit of coverage that applies to the judgment.

These payments are in addition to the limits of coverage. However, the results of an appeal won't change the limits of coverage that apply under this agreement.

When This Agreement Covers

Bodily injury and property damage liability.

We'll apply this agreement to claims or suits for covered bodily injury or property damage whenever they're made or brought.

Personal injury liability. We'll apply this agreement to claims or suits for covered personal injury whenever they're made or brought.

Advertising injury liability. We'll apply this agreement to claims or suits for covered advertising injury whenever they're made or brought.

Medical expenses. We'll apply this agreement to covered medical expenses only when they're reported to us within three years of the beginning date of the event.

Where This Agreement Covers

We'll apply this agreement, and make payments for judgments, settlements, and medical cost or expense, anywhere in the world except the prohibited area.

However, we'll only do so for covered injury, damage, or medical cost or expense that's caused by accidents which happen:

- outside the United States of America, its territories and possessions, Puerto Rico, and Canada;
- outside the prohibited area; or
- in international waters or airspace during travel between places other than the United States of America, its territories and possessions, Puerto Rico, or Canada.

The prohibited area means any country against which the United States Government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries. But we'll no longer consider such country as being in the prohibited area if, before the date the event or offense that results in the claim or suit is committed, such trade sanctions, embargoes, or regulations are removed for any reason by the United States Government, or no longer operate to prevent the conduct of business with or within that country.

Transaction of business includes the ability of a person or organization to conduct any claim investigation.

Who Is Protected Under This Agreement

Individual. If you are shown in the Introduction as a named insured and an individual, you and your spouse are protected persons only for the conduct of a business of which you are the sole owner.

Partnership or joint venture. If you are shown in the Introduction as a named insured and a partnership or a joint venture, you are a protected person. Your partners or co-venturers, and their spouses, are protected persons only for the conduct of your business.

Limited liability company. If you are shown in the Introduction as a named insured and a limited liability company, you are a protected person. Your members are protected persons only for the conduct of your business. And your managers are protected persons only for their duties as your managers.

Corporation or other organization. If you are shown in the Introduction as a named insured and a corporation or an other organization, you are a protected person. Your directors and executive officers are protected persons only for the conduct of their duties as your directors or executive officers. And your stockholders are protected persons only for their liability as your stockholders.

Other organization means an organization other than a corporation, partnership, joint venture, or limited liability company.

Executive officer means any person holding an officer position created by the charter, constitution, or by-laws, or any other similar governing document, of a corporation or other organization.

Employees and volunteer workers. Your employees are protected persons only for:

- work done within the scope of their employment by you; or
- their performance of duties related to the conduct of your business.

And your volunteer workers are protected persons only for activities or work they conduct or perform:

- at your direction; and
- within the scope of their duties for you.

However, no employee or volunteer worker is a protected person for bodily injury or personal injury to:

- you;



- any of your partners or co-venturers if you are a partnership or joint venture;
- any of your members or managers if you are a limited liability company;
- any fellow employee;
- any fellow volunteer worker or any of your employees; or
- the spouse, or any child, parent, brother, or sister, of that employee or volunteer worker if such injury results from the bodily injury or personal injury to such fellow employee or volunteer worker.

Nor is any employee or volunteer worker a protected person for:

- any obligation to share damages with or repay someone else who must pay damages because of such bodily injury or personal injury; or
- bodily injury or personal injury that results from his or her performance of or failure to perform health care professional services.

Also, no employee or volunteer worker is a protected person for property damage to property that's controlled by:

- you;
- any of your partners or co-venturers if you are a partnership or joint venture;
- any of your members or managers if you are a limited liability company;
- that employee or any fellow employee; or
- that volunteer worker, any fellow volunteer worker, or any of your employees.

But we won't apply the exclusions in this Employees and volunteer workers section to:

- bodily injury that results from the providing of or failure to provide first aid by an employee or volunteer worker, other than an employed or volunteer doctor; or
- premises damage.

Nor will we apply the exclusions in this Employees and volunteer workers section to bodily injury or personal injury to:

- any fellow employee that results from work, other than the performance of or failure to perform health care professional services, by your employees who hold supervisory positions; or
- the spouse or any child, parent, brother, or sister of that fellow employee if such

injury results from the bodily injury or personal injury to that fellow employee.

Also, we won't apply this Employees and volunteer workers section to the following protected persons:

- Your managers if you are a limited liability company. Instead, we'll apply the Limited liability company section to them.
- Your executive officers if you are a corporation or an other organization. Instead, we'll apply the Corporation or other organization section to them.

Employee includes a leased worker, other than a leased temporary worker.

Leased worker means any person who:

- is hired from an employee leasing firm under a contract or agreement between the hirer and that firm; and
- is performing duties related to the conduct of the hirer's business.

Volunteer worker means any person who:

- isn't an employee or a leased temporary worker;
- donates his or her work; and
- isn't paid a fee, salary, or other compensation for that work.

Employee leasing firm means any person or organization that hires out workers to others. It includes any:

- employment agency, contractor, or service;
- labor leasing firm; or
- temporary help service.

Leased temporary worker means a leased worker who is hired to:

- temporarily take the place of a permanent employee on leave; or
- meet seasonal or short-term workload conditions.

Controlled by means:

- owned, rented, leased, occupied, borrowed, or used by;
- in the care, custody, or control of; or
- being physically controlled for any purpose by.

Health care professional services includes:

- any dental, medical, mental, nursing, surgical, x-ray, or other health care professional service, including any advice, instruction, food, or beverage provided with such service;
- the dispensing of drugs or medical or dental supplies and appliances; and
- the handling or treatment of corpses, including autopsies, organ donations, and other postmortem procedures.

We explain the term premises damage in the Each event limit section.

Real estate managers. Your real estate managers are protected persons only for their management of premises that you rent, lease, or borrow from others, or own. They may be persons or organizations.

But we won't apply this Real estate managers section to your employees. Instead, we'll apply the Employees and volunteer workers section to them.

Landlords. Any landlord, lessor, manager, or owner of a premises rented or leased to you is a protected person only for the ownership, maintenance, or use of that premises while you rent or lease it.

However, no landlord, lessor, manager, or owner is a protected person for injury or damage that results from any of the following work while being done by or for such landlord, lessor, manager, or owner:

- Structural changes.
- New construction work.
- Demolition work.

But we won't apply this Landlords section to your real estate managers. Instead, we'll apply the Real estate managers section, or the Employees and volunteer workers section, whichever section is applicable, to them.

Equipment lessors. Any lessor or owner of equipment rented or leased to you is a protected person only for your operation, maintenance, or use of that equipment while you rent or lease it.

However, no equipment lessor or owner is a protected person for injury or damage that results from its sole negligence.

Persons or organizations for your work as required by written contract. Any person or organization that:

- is not otherwise a protected person under this agreement; and
- you specifically agree in a written contract to add as an additional protected person under this agreement;

is a protected person, but only for covered bodily injury or property damage that results from your work.

However, no such person or organization is a protected person for bodily injury or property damage that results from their sole negligence.

Also, such person or organization is a protected person only for the lesser of:

- the limits of coverage required by the written contract; or
- the limits of coverage available under this agreement.

Additional protected person may also be called an additional insured in that written contract.

We explain the term your work in the Products and completed work total limit section.

Vendors of your products. Any vendor of your products is a protected person for covered bodily injury or property damage that results from your products, but only if:

- you specifically agree in a written contract to add the vendor as an additional protected person under this agreement;
- this agreement provides coverage for those products; and
- those products are sold or distributed in the normal course of the vendor's business.

However, no vendor from whom you've acquired your products is a protected person.

Nor is any vendor a protected person for bodily injury or property damage that results from:

- any express warranty which is made by the vendor and you haven't authorized;

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- any change made in the condition of any of your products by the vendor;
- the repackaging of your products other than when the products are unpacked for demonstration, inspection, testing, or replacement of parts ordered by you or the manufacturer, and later repackaged in their original containers;
- any failure of the vendor to perform normal or agreed upon servicing of your products which the vendor has sold or distributed;
- the demonstration, installation, or servicing of your products, which is done away from the vendor's premises; or
- your products which have been labeled or relabeled, or used as an ingredient, part, or container in, on, or for anything else, by or for the vendor.

Servicing includes any adjustment, assembly, disposal, inspection, repair or test.

We explain the term your products in the Products and completed work total limit section.

Operators of registered mobile equipment. All operators of registered mobile equipment are protected persons for covered bodily injury or property damage that results from their driving of such equipment on a public street or road with your permission.

Any person or organization legally responsible for the driving conduct of those operators is also a protected person for such bodily injury or property damage. But only if there's no valid and collectible other insurance available to cover its liability for the operators.

However, no operator or any other person or organization is a protected person for:

- bodily injury to a fellow employee of the person driving the equipment; or
- property damage to property controlled by you or the employer of an operator who is a protected person.

Registered mobile equipment means mobile equipment that's registered in your name under a motor vehicle registration law.

We explain the terms:

- controlled by in the Employees and volunteer workers section;
- mobile equipment in the Mobile equipment exclusion; and
- other insurance in the Other Insurance section.

Unnamed subsidiaries. Any of your subsidiaries, other than a partnership, joint venture, or limited liability company, that isn't shown in the Introduction as a named insured is a protected person if you own more than 50% of it on the beginning date of this agreement.

However, no unnamed subsidiary is a protected person for:

- bodily injury or property damage that happened before you own more than 50% of it;
- personal injury or advertising injury that results from an offense that's committed before you own more than 50% of it; or
- injury or damage that's covered by other similar general liability insurance.

Own more than 50% of means own more than 50% of the outstanding voting securities representing the present right to vote for the election of directors of the organization.

Newly acquired or formed organizations. Any organization that you acquire or form while this agreement is in effect that isn't a partnership, joint venture, or limited liability company is a protected person if you own more than 50% of it.

However, no newly acquired or formed organization is a protected person for:

- more than the remainder of the time this agreement is in effect, beginning with the date that you acquired or formed it;
- bodily injury or property damage that happened before you acquired or formed it;
- personal injury or advertising injury that results from an offense committed before you acquired or formed it; or
- injury or damage that's covered by other similar general liability insurance.

Separation of protected persons. We'll apply this agreement separately to each protected person.

However, all protected persons share the limits of coverage shown in the Coverage Summary. We explain how in the Limits Of Coverage section.

Also, any right or duty specifically assigned to the first named insured remains unchanged. We explain those rights and duties in the General Rules, which is a part of your policy.

Limits Of Coverage

The limits of coverage shown in the Coverage Summary and the information contained in this section fix the most we'll pay as damages and medical expenses, regardless of the number of:

- protected persons;
- claims made or suits brought; or
- persons or organizations making claims or bringing suits.

General total limit. This is the most we'll pay for the combined total of:

- all covered bodily injury and property damage that happens in a policy year;
- all covered personal injury that's caused by all personal injury offenses committed in a policy year;
- all covered advertising injury that's caused by all advertising injury offenses committed in a policy year; and
- all covered medical expenses that result from all events that happen in a policy year.

However, we won't apply this limit to bodily injury or property damage that results from your products or your completed work. Instead, we'll apply the products and completed work total limit to such bodily injury or property damage covered by this agreement.

Policy year means the policy period shown in the Introduction, or the period of time that this agreement is in effect, whichever period is shorter. But when that period is longer than one year, policy year means each of the following periods of time that

this agreement is in effect, starting with the beginning date of this agreement:

- Each consecutive one-year period.
- Any period that remains after the last consecutive one-year period.

However, if the original policy period shown in the Introduction is extended for a period of less than one year, we'll consider each such extended period to be part of the last policy year, regardless of the number of extensions provided.

For example:

Your original policy period is two years and nine months long. As a result, it has three policy years, each one separate from the other. The first is the first one-year period. The second is the next one-year period. And the third is the remaining nine-month period.

During the third policy year you request, and we provide, two separate extensions of the policy period: a three-month extension, and then a four-month extension. As a result, the third policy year becomes sixteen months long and is still subject to the same limits of coverage that applies when it was nine months long.

We explain the products and completed work total limit, and the terms your products and your completed work, in the Products and completed work total limit section.

Products and completed work total limit. This is the most we'll pay for all covered bodily injury and property damage that:

- results from your products and your completed work; and
- happens in a policy year.

Your products means any of the goods or products that are or were manufactured, sold, handled, distributed, or disposed of by:

- you;
- others using your name; or
- any person or organization whose business or assets you've acquired.

Your products includes:



- all containers, equipment, materials, or parts provided with or for your products;
- any warranty provided with or for your products;
- any statement made, or that should have been made, about the durability, fitness, handling, maintenance, operation, performance, quality, safety, or use of your products; and
- all warnings, instructions, or directions provided, or that should have been provided, with or for your products.

But we won't consider the following to be your products:

- Goods or products that are still in your physical possession or on a premises that you rent, lease, or borrow from others, or own.
- Real property.
- Containers that are vehicles provided with or for your products.
- Property that's rented or leased to others.
- Property that you haven't sold, but which you allow others to use. For example, a vending machine.

Your completed work means your work that:

- is completed, including work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete; or
- has been abandoned by you.

We'll consider your work to be completed at the earliest of the following times:

- When all of the work called for in your contract has been completed.
- When all of the work to be done at the work site has been completed, if your contract calls for work at more than one site.
- When that part of the work at the work site has been put to its intended use by any person or organization, other than another contractor or subcontractor working on the same project.

Your completed work includes:

- any warranty provided with or for your completed work;
- any statement made, or that should have been made, about the durability, fitness,

handling, maintenance, operation, performance, quality, safety, or use of your completed work; and

- all warnings, instructions, or directions provided, or that should have been provided, with or for your completed work.

But we won't consider the following to be your completed work:

- Uninstalled equipment, abandoned or unused materials or parts, or tools.
- Work done in connection with transporting property.
- Any premises or other real property that you own.
- Any work done to a premises or other real property that you rent or lease from others, or own.
- Any work while on a premises that you rent, lease, or borrow from others, or own.

However, we'll consider a condition created in or on a vehicle in the course of work done in connection with transporting property to be your completed work if:

- the vehicle isn't owned or operated by you;
- the condition is created by the loading or unloading of the vehicle by a protected person; and
- the condition causes bodily injury or property damage.

Your work means any:

- work that you're performing or others are performing for you; or
- service that you're providing or others are providing for you.

Your work includes:

- all equipment, materials, parts, or tools being provided or used with or for your work;
- any statement being made, or that should have been made, about the durability, fitness, handling, maintenance, operation, performance, quality, safety, or use of your work; and
- all warnings, instructions, or directions being provided, or that should have been provided, with or for your work.

We explain the term loading or unloading in the Auto exclusion.

Personal injury each person limit. This is the most we'll pay for all covered personal injury that:

- is sustained by any one person or organization; and
- is caused by all personal injury offenses committed in a policy year.

Advertising injury each person limit. This is the most we'll pay for all covered advertising injury that:

- is sustained by any one person or organization; and
- is caused by all advertising injury offenses committed in a policy year.

Each event limit. This is the most we'll pay for all covered bodily injury, property damage, and medical expenses that result from any one event.

However, the most we'll pay for covered premises damage or medical expenses that result from any one event is further limited by the following:

Premises damage limit. This is the most we'll pay for all covered premises damage that's caused by any one event.

Premises damage means property damage to:

- any premises that you rent, lease, or borrow from others; or
- the contents of any premises that you rent from others if you rent such premises for a period of seven or fewer consecutive days.

Medical expenses limit. This is the most we'll pay for all covered medical expenses that:

- are incurred for bodily injury sustained by any one person; and
- result from any one event.

How the limits of coverage apply if a total limit is left blank. If the amount of the general total limit or the products and completed work total limit is left blank in the Coverage Summary, we'll consider that total

limit to be the same as the each event limit or \$200,000, whichever amount is more.

Currency. Any amount we receive as premium for this policy, as well as any amounts we pay for a claim or suit for covered injury or damage will be in the currency of the United States of America. In the event of a claim or suit for covered injury or damage that requires the adjustment of a foreign currency, the conversion into currency of the United States of America will be at the free rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of such claim or suit for covered injury or damage.

Exclusions - What This Agreement Won't Cover

Aircraft. We won't cover bodily injury, property damage, or medical expenses that result from the:

- ownership, maintenance, use, or operation;
- loading or unloading;
- entrustment to others; or
- supervision of others in or for the maintenance, use, operation, loading or unloading, or entrustment to others; of any aircraft owned, operated, rented, leased, or borrowed by any protected person.

But we won't apply this exclusion to the liability of another to pay damages for bodily injury or property damage if you have assumed such liability under a covered contract that:

- is for the ownership, maintenance, or use of an aircraft; and
- was made before the bodily injury or property damage happens.

Nor will we apply this exclusion to:

- bodily injury, property damage, or medical expenses that result from the operation of specialized equipment; or
- premises damage.

Also, we won't apply this exclusion to bodily injury, property damage, or medical expenses that result from the use of an aircraft chartered by a protected person if:

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- the aircraft is chartered with crew, including a pilot; and
- the protected person isn't using the aircraft to carry persons or property for a charge.

We explain the terms:

- covered contract in the Contract liability exclusion;
- entrustment to others, loading or unloading, and supervision of others, in the Auto exclusion;
- premises damage in the Each event limit section; and
- specialized equipment in the Mobile equipment exclusion.

Auto. We won't cover bodily injury, property damage, or medical expenses that result from the:

- ownership, maintenance, use, or operation;
- loading or unloading;
- entrustment to others; or
- supervision of others in or for the maintenance, use, operation, loading or unloading, or entrustment to others;

of any auto owned, operated, rented, leased, or borrowed by any protected person.

But we won't apply this exclusion to bodily injury, property damage, or medical expenses that result from the parking of an auto on a premises, or on the ways next to such premises, if:

- the premises is owned, rented, leased, or borrowed by you; and
- the auto isn't owned, rented, leased, or borrowed by any protected person.

Nor will we apply this exclusion to:

- bodily injury, property damage, or medical expenses that result from the operation of specialized equipment; or
- premises damage.

Auto means any land motor vehicle, trailer, or semitrailer that's designed for travel on public streets or roads.

We'll consider any machinery or equipment that's permanently attached to an auto to be part of the auto.

But we won't consider mobile equipment to be an auto.

Loading or unloading means the handling of property:

- while it's being moved from the place where it's accepted for transportation;
- while it's being loaded, transported, and unloaded; and
- until it's moved to the place where it's finally delivered.

But we won't consider moving property by an unattached mechanical device to be loading or unloading.

Unattached mechanical device includes any forklift, conveyor, or other unattached mechanical device, other than a hand truck.

Entrustment to others means:

- the permitting of others to use or do something; or
- the giving of something to others for safekeeping.

Supervision of others means:

- the directing, managing, or supervising of a worker, including his or her employment, hiring, evaluation, training, or work; or
- the directing, monitoring, safekeeping, or supervising of any other person or organization for any reason.

We explain the terms:

- mobile equipment and specialized equipment in the Mobile equipment exclusion; and
- premises damage in the Each event limit section.

Breach of contract. We won't cover advertising injury that results from the failure of any protected person to do what is required by a contract or agreement.

Contract liability. We won't cover injury or damage for which the protected person has assumed liability under any contract or agreement.

But we won't apply this exclusion to injury or damage for which the protected person would have liability without the contract or agreement.

Nor will we apply this exclusion to the liability of another to pay damages for:

- bodily injury or property damage sustained by others if you have assumed such liability under a covered contract made before the bodily injury or property damage happens; or
- personal injury or advertising injury sustained by others if you have assumed such liability under a covered contract made before the offense that causes such injury is committed.

Also, if you have agreed under the same covered contract to defend, or pay for the defense of, an indemnitee against a claim or suit for such injury or damage covered by this agreement, we'll defend the indemnitee against the claim or suit. But we'll do so because of that covered contract only if:

- that indemnitee isn't a protected person for that injury or damage;
- that claim or suit is for injury or damage for which you have assumed the liability of the indemnitee under the covered contract;
- the injury or damage is covered by this agreement;
- the claim or suit is made or brought against you and the indemnitee;
- we are defending you against the claim or suit under this agreement;
- all of our indemnitee defense control and authority requirements are fulfilled; and
- all of our indemnitee defense cooperation and notice requirements are fulfilled.

When we provide that contract liability indemnitee defense coverage, we'll do the following:

- We'll defend the indemnitee even if all of the allegations of the claim or suit are groundless, false, or fraudulent. But we won't have a duty to perform any other act or service.
- We'll pay all covered indemnitee defense expenses incurred by us in connection with such claim or suit. Such payments are in addition to the limits of coverage.

However, our duty to defend the indemnitee, or pay indemnitee defense expenses incurred by us, under that contract liability indemnitee defense coverage ends when that indemnitee fails to comply with any of our

indemnitee defense cooperation and notice requirements. It also ends when we have used up the limits of coverage that apply with the payment of:

- judgments;
- settlements; or
- medical expenses.

When we don't provide that contract liability indemnitee defense coverage for the indemnitee, we'll pay covered indemnitee defense expenses assumed under contract that:

- are incurred by or for that indemnitee; and
- are awarded against you in a judgment or agreed to by us in a settlement;

as if they're amounts you're legally required to pay as damages for injury or damage covered by this agreement. Payments of such amounts are subject to the limits of coverage. Our duty to make such payments ends when we have used up the limits of coverage that apply with the payment of:

- judgments;
- settlements; or
- medical expenses.

We'll have the right to appeal a judgment awarded in a suit against an indemnitee if:

- the judgment includes damages for injury or damage for which you have assumed liability under a covered contract;
- such injury or damage is covered by this agreement;
- the indemnitee and its insurers don't appeal the judgment; and
- you agree we may seek the cooperation of that indemnitee for such an appeal.

If we appeal such a judgment, we'll pay the following that result directly from that appeal:

- All expenses we incur.
- All reasonable expenses that any protected person and the indemnitee incur at our request while helping us with the appeal, other than the cost of appeal bonds.
- The cost of any required appeal bond. But only for that part of the judgment that is for damages covered by this agreement and is within the available limit of coverage. However, we'll pay, or reimburse the indemnitee, for the cost of



a higher appeal bond amount if we're required to do so under the law that applies. But we won't be the principal under any such bond. Nor do we have to furnish any appeal bond.

- All postjudgment interest that accumulates on the full amount of the judgment. But only from the date of the judgment to the date we pay, or deposit in court, the limit of coverage that applies to the judgment.

These payments are in addition to the limits of coverage. However, the results of an appeal won't change the limits of coverage that apply under this agreement.

However, if we're prevented by law or other reasons from investigating or defending any claim or suit made or brought for covered injury or damage against any indemnitee, the indemnitee agrees to take whatever steps are necessary to promptly and properly investigate and defend it. Such investigation and defense may be made by or for the indemnitee. But they must be done under our supervision. And we must authorize any settlement before it is made. In addition, we agree to repay reasonable expenses the indemnitee incurs for such investigation, defense or settlement. But our duty to make such payments ends when we have used up the limits of coverage that apply with the payment of judgments, settlements, or medical costs or expenses, or indemnitee defense expenses assumed under contract. Any repayment we make will be in the currency of the United States of America at the rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of any claim or suit for covered injury or damage, or indemnitee defense expenses assumed under contract.

Covered contract means:

- any easement or license agreement;
- any elevator maintenance agreement;
- any lease of premises, other than that part which indemnifies a person or organization for property damage to a premises that you rent, lease, or borrow from others;
- any obligation to indemnify a municipality that is required by ordinance and isn't connected with your work for the municipality;
- any sidetrack agreement;
- that part of any other contract or agreement under which you assume the

tort liability of a municipality to pay damages for injury or damage that results from your work for the municipality; or

- that part of any other contract or agreement under which you assume the tort liability of another to pay damages for injury or damage.

But we won't consider the following parts of those other contracts or agreements under which you assume the tort liability of another to pay damages to be a covered contract:

- Architect, engineer, or surveyor indemnity.
- Architect, engineer, or surveyor professional services by protected person indemnity.
- War indemnity.

Tort liability means a liability that would be imposed by law without any contract or agreement.

Architect, engineer, or surveyor indemnity means that part which indemnifies any architect, engineer, or surveyor for injury or damage that results from:

- the preparation or approval of, or failure to prepare or approve, any drawing and specification, or any map, opinion, report, survey, change order, field order, or shop drawing; or
- the giving of or failure to give any direction or instruction if that giving or failure to give is the primary cause of the injury or damage.

Architect, engineer, or surveyor professional services by protected person indemnity means that part which indemnifies any person or organization for injury or damage that results from the performance of or failure to perform architect, engineer, or surveyor professional services by the protected person who is an architect, engineer, or surveyor.

Architect, engineer, or surveyor professional services includes:

- the preparation or approval of any drawing and specification, or any map, opinion, report, survey, change order, field order, or shop drawing; and
- any architectural, engineering, inspection, or supervisory activity.

War indemnity means that part which indemnifies any person or organization for bodily injury or property damage that results from war.

Indemnatee means any person or organization that you have agreed under a covered contract to indemnify or hold harmless.

Indemnatee defense control and authority requirements means the following requirements that must be fulfilled for us to conduct and control the defense of an indemnatee against a claim or suit under this agreement:

- You and the indemnatee must ask us to conduct and control the defense of that indemnatee against the claim or suit under this agreement.
- We must determine that there's no conflict between your interests and those of the indemnatee, based on the allegations in the claim or suit and on what we know about the factual and legal basis for the damages being sought.
- You and the indemnatee must each agree in writing that we can assign the same counsel to defend them.
- The indemnatee must give us authority in writing to conduct and control its defense against the claim or suit.
- The indemnatee must give us authority in writing to obtain records and other information related to the claim or suit.
- The indemnatee must agree in writing to comply with our indemnatee defense cooperation and notice requirements.

Indemnatee defense cooperation and notice requirements means the following requirements that must be fulfilled for us to continue defending an indemnatee against a claim or suit under this agreement:

- The indemnatee must cooperate with us in the investigation, settlement, or defense of the claim or suit.
- The indemnatee must provide us with a copy of any demand, notice, summons, or legal paper received in connection with the claim or suit as soon as possible after it is received.
- The indemnatee must give notice of the claim or suit to any other insurer that provides coverage which applies to the

claim or suit and is available to that indemnatee.

- The indemnatee must help us coordinate the application of other insurance that's applicable to the claim or suit and available to that indemnatee.

Indemnatee defense expenses incurred by us means the:

- attorney fees and necessary litigation expenses incurred by us to defend an indemnatee against a claim or suit for damages covered by this agreement; and
- necessary litigation expenses incurred by that indemnatee at our request in connection with that claim or suit.

Indemnatee defense expenses assumed under contract means the reasonable attorney fees and necessary litigation expenses that:

- are incurred by or for an indemnatee to defend itself against a claim or suit for damages covered by this agreement; and
- are subject to a covered contract under which you have agreed to defend, or pay for the defense of, that indemnatee against the claim or suit.

We explain the terms:

- your work in the Products and completed work total limit section;
- war in the Medical expenses of certain persons exclusion; and
- other insurance in the Other Insurance section.

Control of property. We won't cover property damage to the following property:

- Property that you rent, lease, or borrow from others, own, or occupy. But we won't apply this exclusion part to premises damage.
- Premises that you sell, give away, or abandon if such property damage results from any part of those premises. But we won't apply this exclusion part to property damage to premises that are your completed work and were never occupied, rented, or held for rental by you.
- Personal property that's in the care, custody, or control of the protected person. But we won't apply this exclusion part to premises damage.

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- That particular part of real property being worked on by or for you if such property damage results from your work.
- That particular part of any property that must be restored, repaired, or replaced because your work was incorrectly performed on it. But we won't apply this exclusion part to property damage that results from your completed work.

Furthermore, we won't apply this exclusion to the liability of another to pay damages for property damage, other than property damage to the property described below, if you have assumed such liability under a sidetrack agreement made before the property damage happens:

- Property that you rent or lease from others, own, or occupy.
- Premises that you sell, give away, or abandon.

We explain the terms:

- premises damage in the Each event limit section; and
- your work and your completed work in the Products and completed work total limit section.

Damage to your products or completed work.

We won't cover property damage to any of your products that's caused by your products themselves or by any of their parts. For example:

You manufacture x-ray machines. They contain several moving parts which can break down for many reasons. Regardless of the cause, we won't protect you for any property damage to the part that fails or to the rest of the x-ray machine.

Nor will we cover property damage to your completed work that's caused by your completed work itself or by any of its parts. But we won't apply this exclusion part to such property damage if:

- this agreement provides completed work liability coverage; and
- your completed work that's damaged, or your completed work that causes the property damage, was done for you by others.

For example:

You construct a computer room in a hospital as a general contractor. Some of the work is done by you while the rest is done for you by subcontractors. The computer room in the hospital is accepted by the owner. If it's damaged by a fire caused by electrical wiring installed by a subcontractor, we won't apply the exclusion. However, if the wiring was installed by you, we'll apply the exclusion to property damage to your completed work done by you.

We explain the terms your products and your completed work in the Products and completed work total limit section.

Deliberately breaking the law. We won't cover personal injury or advertising injury that results from:

- the protected person knowingly breaking any criminal law; or
- any person or organization breaking any criminal law with the consent or knowledge of the protected person.

Employers liability. We won't cover bodily injury to an employee of the protected person arising out of and in the course of his or her:

- employment by the protected person; or
- performance of duties related to the conduct of the protected person's business.

Nor will we cover bodily injury to the spouse, or any child, parent, brother, or sister, of that employee if such bodily injury results from the bodily injury to such employee.

We'll apply this exclusion whether the protected person may be held liable as an employer or in any other capacity, such as a property owner or product manufacturer. For example:

You manufacture laser systems. Your employee is injured while testing your product. That employee receives workers compensation benefits. If the employee later sues you in your capacity as a manufacturer, alleging that the injury happened because your product was defective, we won't protect you.

We'll also apply this exclusion to any obligation of the protected person to share damages with or repay someone else who must pay damages because of bodily injury to any employee of the protected person. For example:

Your employee is injured in an injection molding machine accident. That employee receives workers compensation benefits. Later, the employee sues the manufacturer of the injection molding machine alleging that the injury happened because it didn't have enough guarding devices on it. If the manufacturer in turn sues you, alleging that your faulty maintenance of the machine, not the lack of guarding devices, resulted in the employee's injury, we won't protect you.

But we won't apply this exclusion to the liability of another to pay damages for bodily injury if you have assumed such liability under a covered contract made before the bodily injury happens.

We explain the terms:

- covered contract in the Contract liability exclusion; and
- employee in the Employees and volunteer workers section.

Employment-related practices. We won't cover personal injury to any protected person's employee, prospective or former employee, leased temporary worker, or independent contractor that results from any employment-related practices. For example:

You terminate an employee for falsifying business travel expenses. You explain the reason for the termination of that employee to one of your customers. If your former employee later sues you for slander, we won't protect you.

Nor will we cover personal injury to the spouse or any child, parent, brother, or sister of that person if such personal injury results from any employment-related practices.

We'll apply this exclusion to any obligation of the protected person to share damages with or to repay someone else who must pay damages for personal injury that results from any employment-related practices.

Independent contractor means any person who is not your employee, but who performs duties related to the conduct of your business in the course of that person's independent employment in accordance with a contract between you and that person for specified services.

Employment-related practices means:

- refusal to employ;
- termination of employment; or
- other employment-related act, omission, policy, or practice, such as coercion, libel or slander, demotion, discipline, discrimination, evaluation, harassment, humiliation, reassignment, or violation of a person's right of privacy.

We explain the terms employee and leased temporary worker in the Employees and volunteer workers section.

Expected or intended bodily injury or property damage. We won't cover bodily injury or property damage that's expected or intended by the protected person.

Nor will we cover medical expenses that result from such bodily injury.

But we won't apply this exclusion to bodily injury, property damage, or medical expenses that result from the use of reasonable force to protect people or property.

False material. We won't cover personal injury or advertising injury that results from false material that:

- was made known by or for the protected person; and
- the protected person knew was false when it was made known.

Impaired property. We won't cover property damage to impaired property, or to property that isn't physically damaged, that results from:

- your products that are faulty or dangerous;
- your completed work that is faulty or dangerous; or
- a delay or failure in fulfilling the terms of a contract or agreement.

But we won't apply this exclusion to the loss of use of property, other than your



products or your completed work, that results from sudden and accidental physical damage to:

- your products after they've been put to their intended use; or
- your completed work after it has been put to its intended use.

For example:

You supply an electric motor to a customer who uses it to power his conveyor. The motor's shaft breaks several days later while he's operating the conveyor. The conveyor isn't damaged, but your customer has extra costs because he's unable to use it until the motor is repaired. If he sues you to recover those costs, we won't apply the exclusion. However, if the customer discovers while hooking the motor up to the conveyor that the motor's shaft is broken, we won't protect you.

Impaired property means tangible property, other than your products or your completed work, that can be restored to use by nothing more than:

- an adjustment, repair, replacement, or removal of your products, or your completed work, that forms a part of such tangible property; or
- your fulfilling the terms of a contract or agreement.

We explain the terms your products and your completed work in the Products and completed work total limit section.

Intellectual property. We won't cover injury or damage or medical expenses that result from any actual or alleged infringement or violation of any of the following rights or laws:

- Copyright.
- Patent.
- Trade dress.
- Trade name.
- Trade secret.
- Trademark.
- Other intellectual property rights or laws.

Nor will we cover any other injury or damage or medical expenses alleged in a

claim or suit that also alleges any such infringement or violation.

But we won't apply this exclusion to bodily injury or property damage that results from your products or your completed work.

Nor will we apply this exclusion to advertising injury that results from the unauthorized use of any:

- copyrighted advertising material;
 - trademarked slogan; or
 - trademarked title;
- of others in your advertising.

We explain the terms your products and your completed work in the Products and completed work total limit section.

Liquor liability. We won't cover bodily injury, property damage, or medical expenses that result from any protected person:

- causing or contributing to the intoxication of any person;
- selling, serving, or furnishing alcoholic beverages to any person under the legal drinking age or under the influence of alcohol; or
- violating any law or regulation applying to the sale, gift, distribution, or use of alcoholic beverages.

However, we'll apply this exclusion only if you're in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. For example:

You manufacture monitoring equipment. Each year you host an awards banquet with an open bar for your sales representatives. After this year's banquet an intoxicated guest is involved in an auto accident. The guest and several others are injured. If someone sues you, alleging that your serving of liquor caused the guest's intoxication and involvement in the accident, we won't apply the Liquor liability exclusion because you're not in the business of serving liquor.

But we won't apply this exclusion to premises damage.

We explain the term premises damage in the Each event limit section.

Material previously made known or used. We won't cover personal injury or advertising injury that results from:

- any material that was first made known before this agreement begins; or
- any advertising material, or any slogan or title, of others, whose unauthorized use in your advertising was first committed before this agreement begins.

Medical expenses of certain persons. We won't cover medical expenses that are incurred by or for any person:

- injured while qualifying as a protected person, other than your volunteer workers;
- injured while performing work that he or she was hired to do for any protected person, or any tenant of a protected person;
- injured on that part of any premises that you rent or lease from others, or own, and that the injured person normally occupies;
- to whom such medical expenses are payable, or must be provided, as benefits under any workers compensation law, disability benefits law, or similar law;
- injured by your products or your completed work;
- injured due to war; or
- who refuses to be examined as often as we require, within reason, by doctors we choose.

War includes:

- declared or undeclared war, or invasion;
- warlike action by a military force or other agents of any government, sovereign, or other authority;
- civil war, insurrection, rebellion, revolution, or seizure of power; or
- anything done to hinder or defend against such actions.

We explain the terms:

- volunteer worker in the Employees and volunteer workers section; and
- your products and your completed work in the Products and completed work total limit section.

Mobile equipment. We won't cover bodily injury, property damage, or medical expenses that result from the:

- transportation of mobile equipment by an auto owned, operated, rented, leased, or borrowed by any protected person;
- use of racing mobile equipment; or
- supervision of others in or for such transportation or use.

But we won't apply this exclusion to premises damage.

Mobile equipment means any land vehicle that:

- is designed for use primarily off public streets or roads;
- is kept for use only on or next to premises that you rent or lease from others, or own;
- travels on crawler treads;
- is kept primarily for the ready movement of permanently attached construction equipment; or
- doesn't travel under its own power and is kept primarily for the ready movement of permanently attached specialized equipment.

Mobile equipment includes any land vehicle that:

- isn't described above; and
- is kept primarily for purposes other than carrying people or cargo.

But we won't consider such a vehicle to be mobile equipment if it travels under its own power, is operated like an auto during travel on a public street or road, and has permanently attached:

- specialized equipment; or
- equipment designed for snow removal, street cleaning, or street or road maintenance - but not construction or resurfacing.

Construction equipment includes any:

- grader, scraper, or roller; or
- power crane, digger, drill, loader, or shovel.

Specialized equipment means any:

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- cherry picker or similar device used to lift workers;
- pump, generator, or air compressor; or
- other equipment, such as building cleaning, geophysical exploration, lighting, spraying, welding, or well-servicing equipment, that has a built-in pump, generator, or air compressor.

Racing mobile equipment means any mobile equipment while being prepared for or used in any:

- prearranged racing, speed, demolition, or stunting contest or activity; or
- practice for such contest or activity.

We explain the terms:

- auto, and supervision of others, in the Auto exclusion; and
- premises damage in the Each event limit section.

Nuclear energy liability. We won't cover bodily injury or property damage for which any protected person:

- is also protected under a nuclear energy liability insurance policy; or
- would have been protected under such policy if that policy's limits of coverage hadn't been used up.

Nor will we cover bodily injury or property damage that results from the hazardous properties of nuclear material and for which:

- any person or organization is required by law to maintain financial protection in accordance with the federal Atomic Energy Act or any of its amendments; or
- any protected person is entitled, or would have been entitled had this agreement not been issued, to indemnity from the United States government, or any other government, or any of its agencies, under any contract or agreement between the government, or any of its agencies, and any person or organization.

Also, we won't cover medical expenses that result from:

- the hazardous properties of nuclear material; or
- the operation of a nuclear facility by any person or organization.

In addition, we won't cover bodily injury or property damage that results from the hazardous properties of nuclear material when:

- the nuclear material is located at, or at any time discharges or disperses from, a nuclear facility that is or was at any time owned by any protected person, or operated by or for any protected person;
- the nuclear material is contained in spent nuclear fuel, or nuclear waste, that is or was at any time possessed, handled, used, processed, stored, transported, or disposed of by or for any protected person; or
- the bodily injury or property damage results from the furnishing by any protected person of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of a nuclear facility.

Nuclear energy liability insurance policy means any nuclear energy liability insurance policy issued by any of the following organizations or their successors:

- Nuclear Energy Liability Insurance Association.
- Mutual Atomic Energy Liability Underwriters.
- Nuclear Insurance Association of Canada.

Hazardous properties includes radioactive, toxic, or explosive properties.

Nuclear material means any of the following materials defined in the federal Atomic Energy Act or any of its amendments:

- Source material.
- Special nuclear material.
- By-product material.

Nuclear facility means any:

- nuclear reactor;
- uranium isotopes separation device or equipment;
- special nuclear material device or equipment; or
- nuclear waste site.

Nuclear facility includes:

- the site on which it's located;
- all operations conducted on such site; and

- all premises used for such operations.

Nuclear reactor means any device, equipment, or machine designed or used to:

- sustain nuclear fission in a self-supporting chain reaction; or
- contain a critical mass of fissionable material.

Uranium isotopes separation device or equipment means any device or equipment designed or used for:

- separating the isotopes of uranium or plutonium;
- processing or utilizing spent nuclear fuel; or
- handling, processing, or packaging nuclear waste.

Special nuclear material device or equipment means any device or equipment used for the processing, fabricating, or alloying of special nuclear material if the total amount of such material is at any time in the custody of any protected person at the premises where the device or equipment is located and is more than:

- 25 grams of plutonium or uranium 233, or any combination of those two materials; or
- 250 grams of uranium 235.

Nuclear waste site means any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of nuclear waste.

Nuclear waste means any waste material that:

- contains by-product material; and
- results from the operation of any nuclear reactor, or uranium isotopes separation device or equipment, by any person or organization.

But we won't consider nuclear waste to include tailings or wastes that result from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Spent nuclear fuel means any solid or liquid fuel element or component that's been exposed to radiation or used in a nuclear reactor.

Pollution injury or damage. We won't cover injury or damage or medical expenses that result from pollution at, on, in, or from any:

- protected person's premises;
- waste site; or
- protected person's work site.

Nor will we cover injury or damage or medical expenses that result from pollution involving any waste pollutant.

But we won't apply this exclusion to bodily injury, property damage, or medical expenses that result from:

- building heating equipment fumes, smoke, soot, or vapors;
- contractor or service work materials fumes, gases, or vapors;
- hostile fire heat, fumes, or smoke; or
- mobile equipment operating fluids.

Nor will we apply this exclusion to:

- bodily injury or property damage that results from your products or your completed work, other than waste products or completed work; or
- premises damage that results from fire.

Pollution means any actual, alleged, or threatened discharge, dispersal, escape, migration, release, or seepage of any pollutant.

Pollutant means any solid, liquid, gaseous, or thermal irritant or contaminant, including:

- smoke, vapors, soot, fumes;
- acids, alkalis, chemicals; and
- waste.

Waste includes materials to be recycled, reconditioned, or reclaimed.

Protected person's premises means any premises, site, or location that is or was at any time owned, rented, leased, borrowed, or occupied by any protected person. For example:

You sold an office building two years ago. It contains asbestos ceiling tile that released asbestos into the air while you owned it. A former tenant now sues you for bodily injury that allegedly resulted

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from the release of that asbestos. We won't cover such injury.

Another example:

You own an apartment building. Its woodwork is finished with paint that contains lead. Two of your renters sue you for bodily injury to their children allegedly caused by the lead in that paint. The children supposedly consumed the lead by eating chips of the paint from the window sills in their apartments. We won't cover such injury.

But we won't consider a premises, site, or location that isn't owned, rented, leased, borrowed, or occupied by you to be a protected person's premises in connection with pollution that results from your work being performed there. For example:

You are hired by the owner of a premises to perform work there. The premises owner requires you to provide it with insurance protection for that work. We do so with an additional protected person endorsement under this agreement. Your work being performed on that premises causes pollution injury or damage to happen there. Even though that premises is owned by an additional protected person, we won't consider that premises to be a protected person's premises for purposes of determining your coverage, or the premises owner's coverage, for that injury or damage under this agreement.

Waste site means any premises, site, or location that is or was at any time used by or for any protected person or others for the handling, storage, disposal, processing, or treatment of waste. For example:

For several years waste generated by your manufacturing business was disposed of in a landfill owned by others. The landfill was closed two years ago. Nearby residents now allege that they're being injured by the waste from there. We won't cover such injury.

Protected person's work site means any premises, site, or location at, on, or in which work is being performed by or for any protected person when:

- the pollution involves a pollutant that is brought to, on, or in such premises, site, or location by or for the protected person in connection with such work; or
- the work being performed is pollution work.

For example:

A subcontractor working for you brings a diesel fuel storage tank to the building site for refueling of its excavation equipment. After a couple of days it is discovered that the tank has been leaking. Some of the escaped fuel is found to have seeped into an underground conduit and damaged the insulation on the fiber optic cables in the conduit. We won't cover such property damage.

Waste pollutant means any pollutant that is or was at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- any protected person; or
- any person or organization for whom you may be legally responsible.

For example:

Waste generated by your business is transported to a landfill by a trucker hired by you. There is an accident that causes the waste to be spilled onto the road. One of the firefighters who responds to the accident later alleges that fumes from the waste made her ill. We won't cover such injury.

Building heating equipment fumes, smoke, soot, or vapors means only the fumes, smoke, soot, or vapors that:

- result from equipment used to heat a building at or on a protected person's premises; and
- are within that building.

Contractor or service work materials fumes, gases, or vapors means only the fumes, gases, or vapors that:

- result from materials brought into a building at or on a protected person's work site in connection with work, other than pollution work, being performed there by or for you; and

- are within that building.

Hostile fire heat, fumes, or smoke means only the heat, fumes, or smoke that result from a hostile fire at, on, in, or from:

- the protected person's premises, other than a waste site; or
- the protected person's work site, other than a waste site, but only if the hostile fire doesn't result from pollution work being performed by or for the protected person.

Hostile fire means a fire that:

- becomes uncontrollable; or
- breaks out from where it was intended to be.

Mobile equipment operating fluids means only the fuels, lubricants, or other operating fluids that:

- are part of the mobile equipment being maintained, operated, or used in connection with work, other than pollution work, being performed by or for the protected person at, on, or in the protected person's work site;
- are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of the mobile equipment or any of its parts;
- aren't intended to be discharged, dispersed, or released as part of the operation of the mobile equipment or any of its parts;
- aren't intended to be discharged, dispersed, or released as part of the work being performed by or for the protected person; and
- escape from a mobile equipment part designed to hold, store, or receive them.

Waste products or completed work means:

- your products, or your completed work, that is or was handled, stored, disposed of, processed, or treated as waste at, on, or in a waste site; or
- your products, or your completed work, that is or was a waste pollutant; or
- your completed work that is being used for cleaning up, containing, detoxifying, disposal of, handling, monitoring, neutralizing, processing, removing, storing,

testing for, transporting, or treating any pollutant at, on, or in a waste site.

We explain the terms:

- mobile equipment in the Mobile equipment exclusion;
- pollution work in the Pollution work loss, cost, or expense exclusion;
- premises damage in the Each event limit section; and
- your products, your work, and your completed work in the Products and completed work total limit section.

Pollution work loss, cost, or expense. We won't cover any loss, cost, or expense that results from:

- any request, demand, order, or statutory or regulatory requirement that any protected person or others perform pollution work; or
- any claim or suit by or for any governmental authority for damages that result from the performance of pollution work.

But we won't apply this exclusion to any damages for property damage for which the protected person would have liability without such:

- request, demand, order, or statutory or regulatory requirement; or
- claim or suit.

For example:

One of your products is a container that may be used to store various types of liquids. Several of those containers are sold to a company that uses them for storage of a chemical in one of its warehouses. During such use one of them ruptures and the chemical spills onto a concrete floor. Some of the spilled chemical seeps into the ground through a gap between the floor and an adjoining wall.

The customer alleges that the corrosive effect of the spilled chemical caused parts of the concrete floor to disintegrate, making them unusable. As a result, he demands that you pay the cost to replace

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those parts of the floor and properly dispose of any contaminated concrete.

Also, the customer is concerned that the spilled chemical that seeped into the ground may be considered a source of pollution by adjacent property owners or by a state environmental protection law. As a result, he also demands that you pay the cost to replace and properly dispose of any contaminated soil.

Based on the facts available to us, we'll consider the cost to replace the disintegrated parts of the concrete floor to be damages for property damage that isn't subject to this exclusion. However, we won't cover:

- *the additional cost to properly dispose of any contaminated concrete; or*
- *the cost to replace or properly dispose of any contaminated soil;*

regardless of who demands or requires that such pollution work be done.

Pollution work means:

- *the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing of any pollutant; or*
- *the responding to, or assessing, in any way the effects of any pollutant.*

For example:

A chemical spill at your manufacturing facility releases a vapor cloud. Several hundred people are exposed to the vapor cloud before it disappears. None of them sustain any apparent bodily injury. However, several of them demand that you arrange and pay for medical checkups now, and yearly for the next ten years, to assess the effect of the vapor cloud on their health. We won't cover the cost of such pollution work, regardless of who orders or performs it.

We explain the terms:

- *pollutant in the Pollution injury or damage exclusion; and*
- *your products in the Products and completed work total limit section.*

Poor quality or performance. We won't cover advertising injury that results from the failure of your products, your work, or your completed work to conform with advertised quality or performance.

We explain the terms your products, your work, and your completed work in the Products and completed work total limit section.

Product recall. We won't cover any loss, cost, or expense that is incurred by you or others and results from any recall, removal, or withdrawal of:

- impaired property;
- your products; or
- your completed work;

from the market, or from use by any person or organization, for any reason.

Nor will we cover any loss, cost, or expense that is incurred by you or others and results from the:

- loss of use;
- adjustment, inspection, repair;
- replacement; or
- disposal;

of such property, products, or completed work.

We explain the terms:

- impaired property in the Impaired property exclusion; and
- your products and your completed work in the Products and completed work total limit section.

Unnamed partnership, joint venture, or limited liability company. We won't cover injury or damage or medical expenses that result from the conduct of any current or past partnership, joint venture, or limited liability company that isn't shown in the Introduction as a named insured.

But we won't apply this exclusion to the extent such organization otherwise qualifies as a protected person under the Who Is Protected Under This Agreement section.

Watercraft. We won't cover bodily injury, property damage, or medical expenses that result from the:

- ownership, maintenance, use, or operation;
 - loading or unloading;
 - entrustment to others; or
 - supervision of others in or for the maintenance, use, operation, loading or unloading, or entrustment to others;
- of any watercraft owned, operated, rented, leased, or borrowed by any protected person.

But we won't apply this exclusion to the liability of another to pay damages for bodily injury or property damage if you have assumed such liability under a covered contract that:

- is for the ownership, maintenance, or use of a watercraft; and
- was made before the bodily injury or property damage happens.

Nor will we apply this exclusion to premises damage.

Also, we won't apply this exclusion to bodily injury, property damage, or medical expenses that result from:

- watercraft while ashore on premises that you rent or lease from others, or own;
- watercraft you don't own that is less than 75 feet long and isn't being used to carry persons or property for a charge; or
- the operation of specialized equipment.

We explain the terms:

- covered contract in the Contract liability exclusion;
- entrustment to others, loading or unloading, and supervision of others, in the Auto exclusion;
- premises damage in the Each event limit section; and
- specialized equipment in the Mobile equipment exclusion.

Workers compensation and other benefits laws.

We won't cover any obligation that the protected person has under any:

- workers compensation law;
- disability benefits law;
- unemployment compensation law; or
- similar law.

Wrong price description. We won't cover advertising injury that results from the wrong description of the price of your products, your work, or your completed work.

We explain the terms your products, your work, and your completed work in the Products and completed work total limit section.

Other Insurance

This agreement is primary insurance. If there is any valid and collectible other insurance for injury or damage covered by this agreement, the following applies in connection with that other insurance:

Other insurance means insurance, or the funding of losses, that's provided by or through:

- another insurance company;
- any risk retention group;
- any self-insurance method or program, other than any funded by you and over which this agreement applies; or
- any similar risk transfer or risk management method.

However, we won't consider umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the limits of coverage that apply under this agreement to be other insurance.

Other local insurance. This agreement provides coverage only when:

- there is also coverage in effect under a policy written by a local admitted insurance company; and
- that coverage is more limited than coverage given by this agreement.

We'll only pay the difference between coverage given by this agreement and the amounts available under the local admitted policy of insurance for covered injury or damage or medical expenses.

Coverage given by this agreement won't act as a substitute for required or compulsory insurance. You agree that you will maintain all required or compulsory local insurance up to the minimum limits required by local law.



If you fail to live up to this requirement, we will only be liable under this agreement for the same amounts for which we would have been liable had you kept the required local insurance at the required limits.

Primary or excess other insurance. When there is primary other insurance, we'll share with that other insurance any damages for injury or damage covered by this agreement. We'll do so with one of the methods of sharing described in the Methods of sharing section.

However, we'll apply this agreement as excess insurance over the part or parts of any primary or excess other insurance that provide:

- property or similar coverage for property damage to your work;
- property or similar coverage for property damage to premises that you rent, lease, or borrow from others, other than premises you rent for a period of seven or fewer consecutive days;
- aircraft, auto, or watercraft bodily injury or property damage coverage; or
- protection for you as an additional insured or additional protected person.

We explain how we'll apply this agreement as excess insurance in the When this agreement is excess insurance section.

Aircraft, auto, or watercraft bodily injury or property damage coverage means coverage for bodily injury or property damage that:

- results from the maintenance, use, operation, or loading or unloading of any aircraft, auto, or watercraft; and
- isn't specifically excluded by the Aircraft, Auto, or Watercraft exclusions in this agreement.

We explain the term your work in the Products and completed work total limit section.

When this agreement is excess insurance.

When this agreement is excess insurance, we won't have a duty to defend the protected person against the part or parts of any claim or suit for which any other insurer has the duty to defend that protected person.

However, we'll defend the protected person against a claim or suit for injury or damage covered by this agreement if no other insurer will do so. In return we'll require that we be given all of that protected person's rights against each such insurer.

Also, we'll pay only the amount of damages that's in excess of:

- the total amount that all such other insurance would pay if this agreement didn't exist; and
- the total of all deductible and self-insured amounts under all such other insurance.

But we won't pay more than the limits of coverage that apply under this agreement.

Insurance provided under any other insuring agreement in certain policies written by us or any of our affiliated insurance companies. When this agreement and any other insuring agreement in any policy written by us or any of our affiliated insurance companies and issued to:

- you;
- any organization you own more than a 10% interest in; or
- any person or organization that owns more than a 10% interest in you;

apply or applied to the same claim or suit, the most we'll pay for damages is the highest limit of coverage that applies or applied to the same claim or suit under any one of those agreements.

However, this section does not apply if the other insuring agreement that applies or applied is umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the limits of coverage that apply under this agreement.

Methods of sharing. We'll use one of the methods of sharing described below.

Contribution by equal shares. If all of the other insurance permits contribution by equal shares, we'll share the damages equally. But we won't pay more than the limits of coverage that apply under this agreement. If any policy reaches its limit before the entire amount of damages is paid, the remaining policies will share the balance equally until their limits have been used up

or the amount of the damages is paid in full. For example:

You are required by a court to pay damages of \$1,000,000. Besides this agreement, two other policies apply to the judgment. The limit under this agreement is \$500,000. Policy B has a \$100,000 limit and Policy C's limit is \$300,000.

First, \$100,000 is subtracted from each policy's limit because that is the lowest limit provided by any of the three policies. The result is Policy B's limit is used up, the balance due on the judgment is \$700,000, \$400,000 remains of this agreement's limit, and the unused portion of Policy C's limit equals \$200,000.

Next, \$200,000 is subtracted from the limit under this agreement and Policy C because that amount equals the smallest amount of limit remaining on either policy after the initial \$100,000 payment. The result is Policy C's limit is used up, the balance due on the judgment is now \$300,000, and this agreement has \$200,000 of its limit remaining.

Finally, the rest of the limit under this agreement is paid. The result is this agreement's limit is used up and the balance due on the judgment is now \$100,000, which you must pay. The total paid under each policy is \$500,000 this

agreement, \$100,000 Policy B, and \$300,000 Policy C.

Contribution by limits. If any of the other insurance doesn't permit contribution by equal shares, we'll pay the portion of the damages that is equal to our percentage of the total of all limits that apply. But we won't pay more than the limits of coverage that apply under this agreement. For example:

You are required by a court to pay damages of \$600,000. Besides this agreement, another policy applies to the judgment. The limit under this agreement is \$300,000. Policy B has a \$100,000 limit. The total limit of all insurance is \$400,000.

Our limit is 75% (\$300,000/\$400,000) of the total limit. But we won't pay 75% of the judgment because that \$450,000 share is more than our limit. We'll pay only our limit, which is \$300,000.

Our Responsibility

It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico, and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to liability insurance.

COPY

**FOREIGN VOLUNTARY WORKERS COMPENSATION
AND EMPLOYERS LIABILITY PROTECTION
COVERAGE SUMMARY**
The **St Paul**

This Coverage Summary shows the limits and extent of coverage under your Foreign Voluntary Workers Compensation And Employers Liability Protection.

FOREIGN VOLUNTARY WORKERS COMPENSATION
Covered Employees

A. ☒ U.S. and Canadian Citizens employees of the insured:

Applicable Workers Compensation Law

☒ Workers Compensation and(or) Occupation Disease Law Benefits of STATE of hire; or

☐ Workers Compensation Law and(or) Occupational Disease Law Benefits of specified STATE:

B. ☒ Third Country National Employees of the Insured:

☒ Workers Compensation Law and(or) Occupational Disease Law Benefits of the country of origin; or

☐ Workers Compensation Law and(or) Occupational Disease Law Benefits of specified STATE:

, to Third Country National Employees of a specified nationality:

EMPLOYERS LIABILITY
Covered Employees

☒ A. ☒ U.S. and Canadian Citizen Employees of the Insured

☒ B. ☒ Third Country National Employees of the Insured

☒ C. ☒ Local National Employees of the Insured

Limits Of Coverage

Bodily Injury by Accident \$ 1,000,000 each accident

Bodily Injury by Disease \$ 1,000,000 each employee

Bodily Injury by Disease \$ 1,000,000 policy limit

TRANSPORTATION EXPENSE

Transportation Expense coverage applies to U.S. and Canadian Citizens/Resident Employees, Third Country National Employees, and Local National Employees.

Limits Of Coverage

\$ 25,000 any one employee

\$ policy limit

Name of Insured
E.PIPHANY, INC.

Policy Number TE09405603

Effective Date 06/24/02

Processing Date 07/23/02 16:45 001

FOREIGN VOLUNTARY WORKERS COMPENSATION AND EMPLOYERS LIABILITY PROTECTION**The St Paul**

This insuring agreement provides Foreign Voluntary Workers Compensation Protection and Employers Liability Protection. There are, of course, limitations and exclusions that apply to that protection. As a result, we recommend that you read this agreement carefully to determine the extent of the coverage provided to you and other protected persons.

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Foreign Voluntary Workers Compensation Limits	4	We agree, at your option and on your behalf, to pay voluntarily to your covered employees the compensation, medical and other benefits as specified in the Workers Compensation Law of the state(s) designated in the Coverage Summary, in the same manner as if such covered employees were covered under the provisions of said law or laws.	
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employees will be eligible for the scheduled benefits you voluntarily provide or the Workers Compensation Law of their country of origin. Such employees may also mean at your option any volunteer worker, or any independent contractor with whom you have a written contract to provide such benefits voluntarily.

Workers Compensation Law means the Workers Compensation Law and any Occupational Disease Law, or Social Security Law of any state or political jurisdiction which you voluntarily designate in the Coverage Summary or for which you become liable. This does not include any:

- United States Federal Compensation Laws or Statutes unless otherwise endorsed on this policy;
- Provisions for any Non-Occupational or Disability Benefits Law or Plan, or any similar law or plan; or
- Compulsory admitted Workers Compensation insurance.

State means any nation or political subdivision which has a Workers Compensation Law and includes the states of the United States of America (including its territories and possessions), the District of Columbia, and Puerto Rico.

State of hire, as shown in the Coverage Summary, means the state in which you hire or from which you assign an employee for work at a workplace within another country or countries shown in the coverage territory to which this agreement applies.

Country of origin means any country of which your employee is a citizen.

Endemic disease means an infectious disease, including diseases which are borne by air, arthropods (i.e., arachnids, crustaceans, insects), blood, food or water, provided that the disease is indigenous to a particular region outside the United States and Canada, or occurs in epidemic proportion outside the United States and Canada.

Employers Liability

We will pay all sums, up to the limits of coverage shown in the Coverage Summary, that you legally must pay as damages

because of bodily injury to your covered employees provided:

- the bodily injury is covered by this Employers Liability coverage;
- the bodily injury arises out of endemic disease; or
- the bodily injury arises out of and in the course of the injured employee's employment by you.

The damages we pay, where recovery is permitted by law, include damage:

- for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
- for care and loss of services;
- for consequential bodily injury to a spouse, parent, child, brother, or sister of your injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
- because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

Transportation Expense

We'll pay for additional transportation expenses incurred by an injured covered employee, including the bodies of such employees fatally injured, but only for expenses over and above normal transportation costs from the location.

Normal transportation costs means the cost of transporting an employee in good health, and in conformance with your business travel policy, from the country of injury or sickness to given country of relocation or repatriation.

How This Agreement Applies

Foreign Voluntary Workers Compensation

This Workers Compensation coverage applies to bodily injury by accident or bodily injury by disease, including endemic disease. Bodily injury includes resulting death. The

bodily injury must occur in the coverage territory.

- Bodily injury by accident must occur during the policy period.
- Bodily injury by disease must be caused by or aggravated by the conditions of your employment. Bodily injury by endemic disease, however, must be caused or aggravated by environmental conditions. The employee's last day of exposure to the conditions causing bodily injury by disease or bodily injury by endemic disease must occur during the policy period.

Employers Liability Coverage

This Employers Liability coverage applies to bodily injury by accident or bodily injury by disease, including endemic disease. Bodily injury includes resulting death. The bodily injury must occur in the coverage territory.

- The bodily injury must arise out of and in the course of the injured employee's employment by you or arise out of endemic disease.
- The employment must be necessary or incidental to your work in the coverage territory.
- Bodily Injury by disease must be caused or aggravated by the conditions of your employment. Bodily injury by endemic disease, however, must be caused or aggravated by environmental conditions. The employee's last day of exposure to the conditions causing or aggravating bodily injury by disease, or bodily injury by endemic disease, must occur during the policy period.
- Bodily injury by accident must occur during the policy period.

Transportation Expense

We will reimburse you, up to the corresponding limits of coverage shown in the Coverage Summary for Transportation Expense, for such additional expenses as may be reasonably incurred, over and above normal transportation costs, for the repatriation or relocation of injured, sick, or deceased covered employees, provided that:

- the relocation or repatriation of an injured covered employee must be from the country where the injury or disease occurred to a destination in another

country; this may include an interim country for preliminary treatment or evaluation in route to the final destination which can include the United States and Canada; and

- the relocation or repatriation is necessary, in the opinion of competent medical authorities.

We will also pay, up to the corresponding limits of coverage shown in the Coverage Summary for Transportation Expense, certain expenses related to the death of your covered employees:

- the cost of embalming to meet U.S. standards; and
- all reasonable expenses of transportation to return the remains of the deceased to the country of burial or funeral.

When This Agreement Applies

If an employee is not hired in the United States or Canada, coverage commences when the employment begins or the employee is assigned to begin work. Coverage ends when employment ends for any reason.

If an employee is hired within the United States or Canada, coverage commences at the point and time of embarkation for departure from the United States or Canada. Coverage ends when the employee returns to the United States or Canada. If the employee resigns from your employment or elects to remain outside the United States or Canada, coverage will end when employment ends.

Where This Agreement Applies

We'll defend claims, proceedings, or suits, and pay compensation, benefits, judgments, settlements, and expenses anywhere in the world except for the prohibited area.

The prohibited area means Cuba, Iran, Iraq, Libya, North Korea, Sudan, or any other country against which the United States Government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries. But we'll no longer consider such country as being in the

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prohibited area if such trade sanctions, embargoes, or regulations are removed for any reason by the United States Government, or no longer operate to prevent the transaction of business with or within these countries.

Transaction of business includes, but is not limited to, the ability of a person or organization to conduct claims investigations.

However, we'll only do so for covered bodily injury by accident, bodily injury by disease, including endemic disease, or repatriation arising out of and in the course of employment anywhere in the world except the United States of America, its territories and possessions, Puerto Rico, Canada, and the prohibited area.

Who Is Protected Under This Agreement

You are insured if you are an employer named in the policy Introduction. You are also insured if that employer is a partnership and you are one of its partners, but only in your capacity as an employer of the partnership's employees.

Limits of Coverage

Foreign Voluntary Workers Compensation Limits

We will pay promptly when due the benefits of the applicable Workers Compensation Law or Workers Compensation Law - Country of Origin.

Employers Liability Limits

Our liability to pay for damages is limited to the limits of coverage for Employers Liability shown in the Coverage Summary. They apply as explained below. However, we will not pay any claims for damages after we have paid the applicable limit of our liability under this agreement.

Bodily Injury by Accident. The limit shown in the Coverage Summary for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this agreement because of bodily injury to one or more employees in any one accident.

A disease, including an endemic disease, is not bodily injury by accident unless it results directly from bodily injury by accident.

Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this agreement and arising out of bodily injury by disease, including endemic disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease, including endemic disease, to any one employee.

Bodily injury by disease, including endemic disease, does not include disease that results directly from a bodily injury by accident.

Transportation Expense

The policy limit shown in the Coverage Summary is the most we will pay for all transportation expense covered by this agreement and arising out of bodily injury by accident or bodily injury by disease, including endemic disease, regardless of the number of employees who sustain bodily injury by accident or bodily injury by disease or bodily injury by endemic disease. The limit shown for any one employee is the most that we will pay for all transportation expense covered by this agreement and arising out of bodily injury by accident or bodily injury by disease, including endemic disease, for any one employee.

We will not pay any claims for Transportation Expense after we have paid the applicable policy limit of our liability under this coverage.

Additional Benefits

We will also pay these costs, in addition to other amounts payable under this agreement, as part of any claim, proceeding, or suit we defend, or you defend after consultation with us:

- Reasonable expenses incurred at our request, but not loss of earnings;

- Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under Workers Compensation coverage or the limit of coverage shown in the Coverage Summary for Employers Liability coverage;
- Litigation costs taxed against you;
- Interest on a judgment as required by law until we offer the amount due under this agreement; and
- Expenses we incur.

Exclusions – What this Agreement Won't Cover

Foreign Voluntary Workers Compensation

Excess benefits. We won't cover any payments for which you are responsible in excess of the benefits regularly provided by the applicable Workers Compensation Law or Workers Compensation Law - Country of Origin, including those required because:

- of your serious and willful misconduct;
- you knowingly employ an employee in violation of law;
- you fail to comply with a health or safety law or regulation; or
- you discharge, coerce or otherwise discriminate against any employee in violation of the applicable Workers Compensation Law or Workers Compensation Law - Country of Origin or in violation of any law.

If we make any payments in excess of the benefits regularly provided by the Workers Compensation Law or Workers Compensation Law - Country of Origin on your behalf, you will reimburse us promptly.

Local national employees. We won't cover any local national employees.

However, we won't apply this exclusion to Transportation Expense for local national employees.

Local national employee means any partner or employee hired or assigned by you to work outside of the United States or Canada in any country which is their country of origin. Such designated employees are not eligible for any benefits under any Workers

Compensation Law of which you may voluntarily provide.

Employers Liability

Contract liability. We won't cover liability assumed under a contract.

But we won't apply this exclusion to any warranty that your work will be done in a workmanlike manner.

Punitive damages. We won't cover punitive or exemplary damages because of bodily injury to an employee employed in violation of any law.

Illegal employees. We won't cover bodily injury to an employee while employed in violation of any law with your actual knowledge or the actual knowledge of any of your executive officers.

Workers compensation. We won't cover any obligation imposed by a Workers Compensation, occupational disease, unemployment compensation or disability benefits law, or any similar law.

Intentional bodily injury. We won't cover bodily injury intentionally caused or aggravated by you.

Discrimination. We won't cover damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against, or termination of any employee, or any personnel practices, policies, acts, or omissions.

War. We won't cover bodily injury arising from any direct or indirect consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

Specified employees. We won't cover bodily injury to:

- A master or crew member of any vessel;
- Any employee in the course of any employment subject to the Longshore and Harbor Workers Compensation Act, the Defense Base Act, or the War Hazards Compensation Act; or any amendments or replacements to such Acts; or



- A member of the flying crew of any aircraft.

Other Rules For This Agreement

Foreign Voluntary Workers Compensation

We may request you to pay benefits directly to injured employees or their dependents. We will reimburse you for payments you make on our behalf, and with our approval.

In most cases, we will make payments directly to injured employees or their dependents, at your option and on your behalf. We will make voluntary payments only on the condition that the employee or dependents receiving such payments execute a full release of all claims against you on account of such injuries or disease as may be required by us and, in addition, execute an assignment to us of any right of action which they may have against any person, firm, corporation or estate, other than you, who is or may be liable for such injury. If we collect, by virtue of such assignment, an amount in excess of the voluntary payments made or agreed to be made, we'll be entitled to, and shall retain from the amount recovered, our expenses incident to such recovery and the amount of payments made or agreed to be made. We will pay any remaining balance of the amount recovered to the person or persons executing such assignments. We will have full power and discretion to proceed against the party at fault or settle with such party upon such terms as may seem desirable to us, with or without litigation or during pendency thereof.

Employers Liability - Defense Or Indemnification

We'll indemnify you when we are prevented by law or other reasons from paying amounts you are legally required to pay as damages for covered injury.

We have the right and duty to defend, at our expense, any claim, proceeding, or suit against you for damages payable by this agreement. We have the right to investigate and settle these claims, proceedings, and suits.

However, if we are prevented by law or other reasons from investigating or defending any claim, proceeding, or suit

made or brought for covered injury, you agree to take whatever steps are necessary to promptly and properly investigate and defend it. Such investigation and defense may be made by or for you. But they must be done under our supervision. And we must authorize any settlement before it is made.

In addition, we agree to repay reasonable expenses you incur for such investigation, defense or settlement. But our duty to make such payments ends when we have used up the Limits of Coverage shown in the Coverage Summary. Any repayments we make will be in the currency of the United States of America at the rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of such covered claim, proceeding or suit.

We have no duty to defend a claim, proceeding, or suit that is not covered by this agreement. We have no duty to defend or continue defending after we have paid our applicable limit of coverage as shown in the Coverage Summary.

Currency

Any amounts we receive as premium for this policy, as well as any amounts we pay for a claim or suit for covered injury will be in the currency of the United States of America. In the event of a loss that requires the adjustment of a foreign currency, the conversion into currency of the United States of America will be at the free rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of any claim or suit for such covered injury.

Premium Calculation

The premium for the operations covered by this agreement is shown in the Introduction. The premium for this coverage is based on payroll. The entire gross remuneration estimated to be earned by all covered employees shall be disclosed to us. This remuneration includes cost of living, housing allotments and other such cash benefits that are a part of the overseas compensation package of your employees.

You may elect which employees (including partners, if any) of your company fall within

the coverage categories of this agreement by allocating the appropriate payroll amounts for premium purposes.

Audit

The premium for this coverage is a deposit premium only. You shall maintain records of the information necessary for premium computation and shall send copies to us at such times during or after the policy period as we may direct.

You will let us examine and audit all your records that relate to this agreement. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records and programs for storing and disbursing data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to develop the final premium.

Other Insurance

Workers Compensation

This agreement is intended to be primary insurance for your covered employees whose bodily injuries arise out of and in the course of employment by you outside the United States and Canada or who contract an endemic disease while in your employment outside the United States and Canada.

If an injured covered employee is eligible for Workers Compensation benefits under the laws of countries other than the United States, or other than the country of origin to which the employee would be eligible under this agreement, we will not require said employee or his dependents to file a claim under that foreign program as a pre-condition to filing a claim under this agreement.

However, if an injured covered employee or his dependents, as described above, actually files a claim and receives benefits under such other Workers Compensation or Social Security plans, whether private or state-sponsored, then, we will not pay more than the difference, if any, between the benefits

received or payable under that foreign plan and the benefits payable under the applicable Workers Compensation Laws of:

- the United States;
- the country of origin; or
- any other country for which you become liable.

We will only pay such difference when the amount of benefit under the foreign plan has been determined and we have satisfactory evidence of such determination.

Employers Liability

If your admitted Employers Liability insurance responds to a claim, proceeding or suit for which this agreement grants coverage, we will provide excess insurance. If your admitted Employers Liability insurance does not respond to a claim, proceeding or suit for which this agreement grants coverage, we will provide primary insurance.

If you do not have in-force admitted Employers Liability insurance, we will provide primary insurance for a claim proceeding or suit for which this agreement grants coverage. However this provision will not apply if coverage is compulsory.

We will not pay more than our share of damages and costs covered by this agreement and other insurance or self-insurance, including self-insurance which results from your failure to comply with compulsory admitted Employers Liability Insurance requirements, if any. Subject to any limits of insurance that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the share of all remaining insurance and self-insurance will be equal until the loss is paid.

Admitted means a contract of insurance which is underwritten by an insurer licensed to do business in the jurisdiction where the exposure to loss is located.

Compulsory means an admitted insurance which you are required to have in force to satisfy the legal requirements of given country.

ASBESTOS EXCLUSION ENDORSEMENT**The St. Paul**

This endorsement changes your Commercial General Liability Protection.

How Coverage Is Changed

The following is added to the Exclusions - What This Agreement Won't Cover section. This change excludes coverage.

Asbestos. We won't cover injury or damage or medical expenses that result from any actual, alleged, or threatened:

- absorption, ingestion, or inhalation of asbestos in any form by any person; or
- existence of asbestos in any form.

Nor will we cover injury or damage that results from any actual, alleged, or threatened:

- absorption, ingestion, or inhalation of any other solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, and waste, in any form by any person; or
- existence of any such other irritant or contaminant in any form;

and is part of any claim or suit that also alleges any injury or damage described in the first paragraph of this exclusion.

We also won't cover any loss, cost, or expense that results from any request, demand, order, or statutory or regulatory requirement that any protected person or others:

- test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize asbestos in any form; or
- respond to, or assess, in any way the effects of asbestos in any form.

Because asbestos, and any such other irritants or contaminants, are pollutants, this exclusion applies in addition to any of the following exclusions that apply:

- Pollution injury or damage exclusion.
- Pollution work loss, cost, or expense exclusion.
- Any other pollution-related exclusion made part of this agreement.

We explain the terms pollutant and waste in the Pollution injury or damage exclusion.

Other Terms

All other terms of your policy remain the same.

COPY

The **St Paul****GLOBAL COMPANION POLICY
AUTO LIABILITY AND AUTO MEDICAL PAYMENTS PROTECTION
COVERAGE SUMMARY**

This Coverage Summary shows the Limit Of Coverage that applies to your Global Companion Policy Auto Liability Protection and your Global Companion Policy Auto Medical Payments Protection.

Auto Liability Protection

Limit of Coverage \$ 1,000,000 ✓

Auto Medical Payments Protection

Limit of Coverage \$

Covered Autos

- ☐ Any auto
- ☐ Owned commercial autos
- ☐ Owned private passenger autos
- ☐ Scheduled autos
(see attached International Auto DIC/Excess Liability Schedule, 44433)
- ✓ ☒ Hired autos
- ✓ ☒ Nonowned autos
- ☐ Other:

Name of Insured
E.PIPHANY, INC.

Policy Number TE09405603

Effective Date 06/24/02

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**GLOBAL COMPANION POLICY
AUTO LIABILITY PROTECTION****The St Paul**

This insuring agreement provides auto liability protection for your business. There are, of course, limitations and exclusions which apply to that protection. As a result, this agreement should be read carefully to determine the extent of the coverage provided to you and other protected persons.

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Which Autos Are Covered	4	What This Agreement Covers	
Any auto	4	Bodily injury and property damage liability.	
Owned commercial autos	4	We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury or property damage that:	
Owned private passenger autos	4	• results from the ownership, maintenance, use, loading or unloading of a covered auto; and	
Scheduled autos	4	• is caused by an accident that happens while this agreement is in effect.	
Hired autos	4	Pollution cost or expense. We'll pay amounts any protected person is legally required to pay as covered pollution cost or expense only if it results from an accident which also causes bodily injury or property damage covered by this agreement.	
Nonowned autos	4	Protected person means any person or organization who qualifies as a protected person under the Who Is Protected Under This Agreement section.	
When This Agreement Covers	5	Bodily injury means any physical harm, including sickness or disease, to the physical health of other persons. It includes any of the following that results at any time from such physical harm, sickness or disease:	
Where This Agreement Covers	5	• Mental anguish, injury or illness.	
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- Care, loss of services, or death.

Property damage means

- physical damage to tangible property of others, including loss of use of such property; or
- loss of use of tangible property of others that isn't physically damaged.

We'll consider all loss of use of tangible property to happen at the time of the accident which caused it.

Accident includes continuous or repeated exposure to the same conditions.

Covered auto means the type or types of autos shown in the Coverage Summary and described in the Which Autos Are Covered section.

Auto means any land motor vehicle, trailer or semi-trailer designed for travel on public streets or roads. It includes:

- any permanently attached machinery or equipment; and
- any mobile equipment only while it's being carried or towed by a covered auto.

Mobile equipment means any land vehicle that:

- is designed for use primarily off public streets or roads;
- is kept for use only on or next to premises you own, rent or lease;
- travels on crawler treads;
- is kept primarily for the ready movement of permanently attached construction equipment; or
- doesn't travel under its own power and is kept primarily for the ready movement of permanently attached specialized equipment.

Mobile equipment includes any land vehicle not described above that's kept primarily for purposes other than carrying people or cargo. But we won't consider such a vehicle to be mobile equipment if it:

- travels under its own power;
- is operated like an auto during travel on a public street or road; and
- has permanently attached specialized equipment; or

- has permanently attached equipment designed for snow removal, street cleaning, or street or road maintenance - but not construction or resurfacing.

Construction equipment includes any grader, scraper, roller and power crane, shovel, loader, digger, or drill.

Specialized equipment means any:

- cherry picker or similar device used to lift workers;
- pump, generator, or air compressor; or
- other equipment, such as building cleaning, geophysical exploration, lighting, spraying, welding or well-servicing equipment, that has a built-in pump, generator or air compressor.

Loading means moving property from the place where it's accepted for transportation by a protected person until it's placed in or on a covered auto.

Unloading means moving property from a covered auto to the place where it's finally delivered by a protected person.

However we won't consider moving property with a mechanical device, such as a forklift or conveyor, that's not attached to a covered auto to be loading or unloading. But we won't consider a hand truck to be a mechanical device.

Pollution cost or expense means any cost or expense that results from:

- any request, demand or order that any protected person or others perform pollution work; or
- any claim or suit by or for any governmental authority demanding that any protected person or others perform pollution work.

Pollution work means:

- the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing of any pollutant; or
- the responding to, or assessing, in any way the effects of any pollutant.

Right and duty to defend. We'll have the right and duty to defend any claim or suit for covered bodily injury, property damage, or

pollution cost or expense made or brought against any protected person. We'll do so even if any of the allegations of any such claim or suit are groundless, false or fraudulent. But we have no duty to perform other acts or services. And our duty to defend claims or suits ends when we have used up the limit of coverage that applies with the payment of judgments, settlements, or pollution cost or expense.

We'll have the right to investigate any claim or suit to the extent that we believe is proper. We'll also have the right to settle any claim or suit within the available limits of coverage.

However, if we're prevented by law or other reasons from investigating or defending any claim or suit made or brought for covered bodily injury, property damage, or pollution cost or expense against any protected person, you agree to take whatever steps are necessary to promptly and properly investigate and defend it. Such investigation and defense may be made by or for you. But they must be done under our supervision. And we must authorize any settlement before it is made.

In addition, we agree to repay reasonable expenses you incur for such investigation, defense or settlement. But our duty to make such payments ends when we have used up the limits of coverage that apply with the payment of judgments or settlements. Any repayment we make will be in the currency of the United States of America at the rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of any claim or suit for such bodily injury, property damage, or pollution cost or expense.

Claim means a demand which seeks damages or pollution cost or expense.

Suit means a civil proceeding which seeks damages or pollution cost or expense. It includes:

- an arbitration proceeding for such damages to which the protected person must submit or submits with our consent.
- any other alternative dispute resolution proceeding for such damages to which the protected person submits with our consent.

Duty to indemnify. We'll indemnify you when we are prevented by law or other reasons from paying amounts any protected person is legally required to pay as damages for covered injury or damage.

Additional payments. We'll have the duty to make only the payments shown below in connection with any claim or suit we defend. These payments are in addition to the limit of coverage. But our duty to make such payments ends when we have used up the limit of coverage that applies with the payment of judgments, settlements, or pollution cost or expense.

Our expenses. We'll pay all expenses we incur.

Bail bonds. We'll pay up to \$2,500 of the cost of bail bonds that are required because of accidents or violations of traffic laws. But only if the accidents or violations result from the use of a vehicle to which the bodily injury liability coverage under this agreement applies. We don't have to furnish such bonds.

Bonds to release property. We'll pay the cost of bonds to release property that's being used to secure a legal obligation. But only for bond amounts within the limit of coverage that applies. We don't have to furnish such bonds.

Expenses incurred by protected persons. We'll pay all reasonable expenses that any protected person incurs at our request while helping us investigate or defend a claim or suit. But we won't pay more than \$500 per day for earnings actually lost by the protected person because of time taken off from work.

Taxed costs. We'll pay all costs taxed against any protected person in a suit.

Pre-judgment interest. We'll pay the pre-judgment interest that's awarded against the protected person on that part of a judgment paid by us. But if we make a settlement offer to pay the available limit of coverage, we won't pay the pre-judgment interest that accumulates after the date of our offer.

Post-judgment interest. We'll pay all interest that accumulates on the full amount of that part of a judgment for which we

The St Paul

make a payment. But only from the date of the judgment to the date we:

- pay;
- offer to pay; or
- deposit in court;

the limit of coverage that applies to the judgment.

Right to appeal. We'll have the right to appeal a judgment for covered bodily injury, property damage, or pollution cost or expense in any suit we defend.

If we appeal such a judgment, we'll pay all expenses which result directly from that appeal, including the cost of appeal bonds and post-judgment interest. Such appeal expenses are in addition to the limit of coverage. However, the results of an appeal won't change the limit of coverage that applies under this agreement.

Which Autos Are Covered

The Coverage Summary shows and the information in this section describes the type or types of autos which are covered autos.

Any auto means any owned, rented, leased or borrowed auto. It includes hired, nonowned, newly acquired, replacement and temporary substitute autos.

Owned commercial autos means any auto you own that isn't of the private passenger type. It includes any trailer or semi-trailer while attached to that auto. It also includes:

- newly acquired autos of the same type;
- replacement autos of the same type; and
- temporary substitute autos.

Owned private passenger autos means any auto you own that's of the private passenger type. It includes any trailer while attached to that auto. It also includes:

- newly acquired autos of the same type;
- replacement autos of the same type; and
- temporary substitute autos.

Scheduled autos means any auto you own that's described in the Auto Schedule. It

includes any nonowned trailer while attached to a scheduled auto. It also includes:

- newly acquired autos, but only if we cover all of your owned autos and you tell us within 30 days after you acquire such autos that you want us to cover them;
- replacement autos if you tell us within 30 days after you acquire such autos that you want us to cover them; and
- temporary substitute autos.

Hired autos means any auto that you hire, rent, lease or borrow from others, other than your employees or members of their households. We'll consider any auto that you lease for a period of 6 months or more to be an auto that you own.

Nonowned autos means any auto that:

- you don't own, hire, rent, lease or borrow; and
- is used in the conduct of your business.

It includes autos owned by your employees or partners or members of their households. But only while such autos are being used in the conduct of your business.

Newly acquired autos means any additional auto that you acquire while this agreement is in effect. We'll provide the same limit of coverage, and deductible, if any, to such autos as you have on similar types of autos, unless you tell us differently.

Replacement autos means any auto that replaces a covered auto. We'll provide the same limit of coverage, and deductible, if any, to such autos as you have for the covered auto being replaced, unless you tell us differently.

Temporary substitute autos means any auto not owned by you while it's being used, with permission of its owner, as a temporary substitute for a covered auto you own which can't be used because it:

- has broken down;
- has been damaged, destroyed or stolen; or
- is being repaired or serviced.

Private passenger type means ordinary private passenger cars, station wagons, pickups, and vans.

When This Agreement Covers

We'll apply this agreement to claims or suits for covered bodily injury, property damage or pollution cost or expense whenever they're made or brought.

Where This Agreement Covers

We'll defend claims and suits, and pay judgments, settlements, and pollution cost or expense anywhere in the world except for the prohibited area

The prohibited area means:

- Cuba;
- Iran;
- Iraq;
- Libya;
- North Korea;
- Sudan; or
- any other country against which the United States Government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries. But we'll no longer consider such country as being in the prohibited area if such trade sanctions, embargoes, or regulations are removed for any reason by the United States Government, or no longer operate to prevent the transaction of business with or within these countries.

Transaction of business includes, but is not limited to, the ability of a person or organization to conduct claims investigations.

However, we'll only do so for covered bodily injury, property damage, or pollution cost or expense that's caused by accidents which happen:

- outside the United States of America, its territories and possessions, Puerto Rico, and Canada;
- outside the prohibited area; or
- in international waters or airspace during travel between places other than the United States of America, its territories and possessions, Puerto Rico, or Canada.

Who Is Protected Under This Agreement

Individual. If you are named in the Introduction as an individual, you and your spouse are protected persons for the use of a covered auto.

Partnership or joint venture. If you are named in the Introduction as a partnership or joint venture, you are a protected person for the use of a covered auto. Also, your partners or co-venturers and their spouses are protected persons. But only for the use of a covered auto.

However, no person or organization is a protected person for the conduct of any current or past partnership or joint venture that's not named in the Introduction.

Corporation or other organization. If you are named in the Introduction as a corporation or other organization, you are a protected person for the use of a covered auto. Also, your executive officers and directors are protected persons. But only for the use of a covered auto. Also, your stockholders are protected persons, but only for their liability as your stockholders.

Any permitted user. Any person or organization to whom you've given permission to use a covered auto you own, rent, lease, hire or borrow is a protected person.

However, we won't consider the following to be a protected person:

- The owner or anyone else from whom you rent, lease, hire or borrow a covered auto unless that auto is a trailer that's connected to a covered auto you own.
- An employee of yours or a member of an employee's household if the covered auto is owned by that employee or member of that employee's household.
- Anyone using a covered auto while working in the business of selling, servicing, repairing, storing or parking autos, unless the business is yours.
- Anyone other than your employees, partners, lessee or borrower or any of their employees while loading or unloading a covered auto.

The St. Paul

Anyone legally responsible for the actions of a protected person. Any person or organization who is legally responsible for the actions of a protected person described above is also a protected person for the use of a covered auto. For example:

An employee who works for another company borrows a covered auto from you. That person causes an accident which results in covered bodily injury and property damage. We'll consider you, that employee, and the other company that employs the other person to be protected persons.

But we won't consider the owner or anyone else from whom you rent, lease, hire or borrow a covered auto to be a protected person unless it's a trailer that's connected to a covered auto you own.

Separation of protected persons. We'll apply this agreement:

- to each protected person named in the Introduction as if that protected person was the only one named there; and
- separately to each other protected person.

However, the limit of coverage shown in the Coverage Summary is shared by all protected persons. We explain how in the Limits Of Coverage section. Also, any right or duty specifically assigned to the first Named Insured remains unchanged. We explain those rights and duties in the General Rules, which is a part of your policy.

Limit Of Coverage

The Coverage Summary shows the limit of coverage that applies to this agreement.

The Each accident limit is the most we'll pay for the combined total of all covered bodily injury, property damage and pollution cost or expense that results from any one accident. This limit applies regardless of the premiums paid or number of:

- protected persons;
- premiums paid;
- claims made or suits brought;
- covered autos;

- vehicles involved in the accident; or
- persons or organizations making claims or bringing suits.

We consider all covered bodily injury, property damage and pollution cost or expense that results from continuous or repeated exposure to substantially the same conditions to be the result of one accident.

Currency. Any amount we receive as premium for this policy, as well as any amounts we pay for a claim or suit for covered bodily injury, property damage, or pollution cost or expense will be in the currency of the United States of America. In the event of a loss that requires the adjustment of a foreign currency, the conversion into currency of the United States of America will be at the free rate of exchange as published by the Federal Reserve Bank of New York as of the date of the settlement of any claim or suit for such bodily injury, property damage, or pollution cost or expense.

Exclusions - What This Agreement Won't Cover

Contract liability. We won't cover the protected person's liability for bodily injury or property damage assumed under any contract or agreement.

However, we won't apply this exclusion to liability for bodily injury or property damage the protected person would have without the contract or agreement. Nor will we apply this exclusion to the protected person's liability for bodily injury or property damage assumed under a covered contract made before the bodily injury or property damage happens.

Covered contract means any:

- lease of premises;
- sidetrack agreement;
- easement or license agreement;
- obligation to indemnify a municipality if the obligation is required by ordinance and isn't connected with work for the municipality;
- contract or agreement under which you assume the tort liability of a municipality to pay damages for covered bodily injury or property damage that is sustained by

others and results from work for the municipality;

- other contract or agreement under which you assume the tort liability of another to pay damages for covered bodily injury or property damage that's sustained by others; or
- contract or agreement which you or any of your employees enter into for the rental or lease of any auto.

Tort liability means a liability that would be imposed by law without any contract or agreement.

But we won't consider the following parts of any contract or agreement to be a covered contract:

Auto with driver. That part which has to do with the rental, lease or loan of an auto to you or any of your employees if the auto is rented, leased or loaned with a driver.

Use of a motor carrier's permit. That part which indemnifies any person or organization in the business of transporting people or property by an auto for hire for your use of a covered auto over a route or in a territory the person or organization is authorized by a public authority to use or serve.

Damage to rented or leased auto. That part which obligates you or any of your employees to pay for property damage to any auto rented or leased by you or any of your employees.

War. That part which indemnifies any person or organization for bodily injury or property damage caused by:

- declared or undeclared war, or invasion;
- warlike action by a military force or other agents of any government, sovereign or other authority;
- civil war, insurrection, rebellion, revolution or seizure of power; or
- anything done to hinder or defend against these actions.

Control of property. We won't cover property damage to property owned by, transported by or in the care, custody or control of a protected person.

But we won't apply this exclusion to liability for property damage assumed under a sidetrack agreement.

Employers liability. We won't cover bodily injury to an employee arising out of his or her employment by a protected person. Nor will we cover bodily injury to the spouse, child, parent, brother, or sister of that employee which results from the bodily injury to the employee.

We'll apply this exclusion whether the protected person may be held liable as an employer or in any other capacity.

We'll also apply this exclusion to any obligation of the protected person to share damages with or repay someone else who must pay damages because of bodily injury to any employee of the protected person.

But we won't apply this exclusion to:

- bodily injury to domestic employees not entitled to workers compensation benefits; or
- liability for bodily injury assumed under a covered contract.

We explain what we mean by covered contract in the Contract liability exclusion.

Injury to a fellow employee. We won't cover bodily injury to a fellow employee of any protected person arising out of and in the course of the fellow employee's employment by you.

Intentional or expected bodily injury or property damage. We won't cover bodily injury or property damage that's expected or intended by the protected person.

Nuclear energy liability. We won't cover bodily injury or property damage for which any protected person:

- is covered by a nuclear energy liability insurance policy; or
- would have been covered by such policy if that policy's limits of coverage hadn't been used up.

Nor will we cover bodily injury or property damage that results from the hazardous properties of nuclear material and for which:

The St Paul

- any person or organization is required by law to maintain financial protection for any nuclear events; or
- any protected person is entitled, or would have been entitled had this agreement not been issued, to indemnity for nuclear events from any sovereign government, or any of its agencies, under any contract or agreement between any sovereign government, or any of its agencies, and any person or organization.

And we won't cover bodily injury or property damage that results from the hazardous properties of nuclear material when:

- the nuclear material is located at, or at any time discharges or disperses from, any nuclear facility owned by any protected person, or operated by or for any protected person;
- the nuclear material is contained in spent nuclear fuel or nuclear waste that is at any time possessed, handled, used, processed, stored, transported or disposed by or for any protected person; or
- the bodily injury or property damage results from the furnishing by any protected person of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility.

Property damage includes all forms of radioactive contamination of property.

Hazardous properties include radioactive, toxic or explosive properties.

Nuclear material means any of the following materials which are defined in the federal Atomic Energy Act, or any of its amendments:

- Source material.
- Special nuclear material.
- By-product material.

Nuclear facility means any:

- nuclear reactor;
- uranium isotopes separation device or equipment;
- special nuclear material device or equipment; or
- nuclear waste site.

Nuclear facility includes:

- the site on which it's located;
- all operations conducted on such site; and
- all premises used for such operations.

Nuclear reactor means any device, equipment or machine that's designed or used to:

- sustain nuclear fission in a self-supporting chain reaction; or
- contain a critical mass of fissionable material.

Uranium isotopes separation device or equipment means any device or equipment designed or used for:

- separating the isotopes of uranium or plutonium;
- processing or utilizing spent nuclear fuel; or
- handling, processing or packaging nuclear waste.

Special nuclear material device or equipment means any device or equipment used for the processing, fabricating or alloying of special nuclear material if the total amount of such material:

- is more than 25 grams of plutonium or uranium 233, or any combination of the two, or 250 grams of uranium 235; and
- is at any time in the custody of any protected person at the premises where the device or equipment is located.

Nuclear waste site means any structure, basin, excavation, premises or place prepared or used for the storage or disposal of nuclear waste.

Nuclear waste means any waste material that:

- contains by-product material; and
- results from the operation of any nuclear reactor or uranium isotopes separation device or equipment by any person or organization.

But we won't consider nuclear waste to include tailings or wastes that result from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Spent nuclear fuel means any solid or liquid fuel element or component that has been exposed to radiation or used in a nuclear reactor.

Pollution. We won't cover bodily injury or property damage that results from pollution involving any pollutant, or any pollutant contained in any property, that's:

- being transported or towed by a covered auto;
- being loaded onto or unloaded from a covered auto;
- otherwise in the course of transit by or for any protected person; or
- being stored, disposed of, treated or processed in or on a covered auto.

For example:

A covered auto carrying a cargo of chemicals skids off of a road and overturns. Several of the containers of chemicals are damaged during the accident and their contents leak out. Fumes from the spilled chemicals injure a motorist who stopped to help the truck driver. And a fire begins in a pool formed by the spilled chemicals and spreads to a nearby building, damaging its exterior. We won't cover any such bodily injury or property damage.

However, we won't apply this exclusion to bodily injury or property damage that results from pollution caused by fuels, lubricants, fluids, exhaust gases or similar pollutants that:

- are needed for or result from the normal electrical, hydraulic or mechanical functioning of a covered auto, other than the operation of specialized equipment; and
- escape, seep or migrate, or are discharged, dispersed or released, directly from a part of the covered auto designed by it's manufacturer to hold, store, receive or dispose of such pollutants.

For example:

One of your covered autos is a truck with a hydraulic system that leaks. We won't apply this exclusion to the bodily injury or property damage that may result from such pollution.

Another example:

One of your covered autos is a tow truck. It is involved in an accident with another vehicle. Your tow truck's gas tank is ruptured and leaks. We won't apply this exclusion to the bodily injury or property damage that may result from such pollution.

Another example:

While being pulled by a covered auto, your compressor leaks gas. We won't apply this exclusion to the bodily injury or property damage that may result from such pollution. However, if the gas leakage occurred during the operation of the compressor, the resulting damage would not be covered because it results from the operation of specialized equipment.

Nor will we apply this exclusion to bodily injury or property damage that results from pollution from property of others which:

- isn't in your care, custody or control;
- isn't being transported or towed by or for you; and
- is damaged by an accident due to the ownership, maintenance or use of a covered auto.

For example:

A covered auto skids off of a road and hits a fuel storage tank owned by others. Several hundred gallons of fuel leak out and then explode into flames. The fire destroys a nearby building and injures two bystanders. We won't apply this exclusion to the bodily injury and property damage that results from such pollution.

Pollution means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any pollutant.

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including:

- smoke, vapors, soot, fumes;
- acids, alkalis, chemicals; and
- waste.

The St Paul

Waste includes materials to be recycled, reconditioned or reclaimed.

We explain what we mean by specialized equipment in the What This Agreement Covers section.

Racing or demolition contest. We won't cover bodily injury, property damage or pollution cost or expense that results from the use of a covered auto in any organized racing or demolition contest or stunting activity. This exclusion also applies to any practice or preparation for such contest or activity.

Specialized equipment. We won't cover bodily injury or property damage that results from the operation or use of any specialized equipment.

However, we won't apply this exclusion to bodily injury or property damage that results from specialized equipment while being carried or towed by a covered auto.

We explain what we mean by specialized equipment in the What This Agreement Covers section.

War. We won't cover bodily injury, property damage, or pollution cost or expense that results, in any way, from war; declared or undeclared, invasion, civil war, rebellion or revolution.

We explain what we mean by war in the Contract liability exclusion.

Workers compensation. We won't cover any obligation that the protected person has under a workers' compensation, disability benefits or unemployment compensation law, or any similar law.

Other Insurance

If this agreement provides coverage which is not provided by similar local insurance you purchase, then this agreement will provide primary insurance for autos you own and excess insurance for autos you don't own.

Otherwise, this agreement provides excess insurance. Excess insurance applies after other collectible insurance has been used up.

However, when a covered trailer is connected to a covered auto, this agreement applies to the trailer in the same way as the covered auto. For example, if a trailer you own is connected to a covered auto you don't own, this agreement will be excess insurance for the trailer. If a trailer you don't own is connected to a covered auto you own, this agreement is primary insurance for the trailer.

This agreement is primary insurance for liability for covered bodily injury or property damage assumed under a covered contract.

We explain what we mean by covered contract in the Contract liability exclusion.

Insurance provided under another policy with us or any of our member insurance companies. When this agreement and other insurance contained in a policy from us or another member insurance company of The St. Paul Group both apply to the same accident, the most we will pay is the highest limit of coverage that applies under any one policy. When the other insurance written by us or the member insurance company is intended to be excess over this agreement, this section does not apply.

How This Insurance Applies To Locally Required Coverage

The coverage provided by this agreement will NOT act as a substitute for any compulsory local insurance. You agree that you will maintain all such insurance in full force at limits required by law. If you fail to comply with these requirements, we will only be liable to the same extent as if you had complied with the compulsory insurance requirements. For example:

In a country within the coverage territory, you are required by law to maintain auto liability limits of \$50,000 in order to operate a vehicle in that country. You fail to do so and a covered auto is involved in an accident. We'll only pay the amount of the covered loss in excess of the \$50,000 limit required by law.

Our Responsibility

It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and

possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to liability insurance.

EXHIBIT 3



Southern California Claim Office
333 City Blvd. West, Suite 1100
Orange, CA 92868-2973
714-620-1200 TEL
800-221-3974
714-620-1256 FAX
www.stpaultravelers.com

CERTIFIED MAIL

July 23, 2004

ERIC SCHULDT
E.PIPHANY, INC.
1900 S. NORFOLK STREET
SUITE 310
SAN MATEO, CA 94403

Re: Claim Number: TE09405602
Insured: E.PIPHANY
Claimant: SIGMA DYNAMICS
Date of Loss: TBD

This will acknowledge receipt of the above captioned claim on July 22, 2004. This claim will be handled by the **Technology Claim Unit**. The Technology Claim Unit provides dedicated, specialized claim handling services involving your specialty technology coverages, as well as claims involving intellectual property issues.

The St. Paul Fire and Marine Insurance Company is undertaking an investigation and coverage analysis of this matter; however, we are not waiving any of the rights or defenses secured to us under the terms of our policy, nor are any rights secured to you jeopardized in any way.

There is a possibility this claim may not be covered under our policy. At this time, we have insufficient information to make that determination, and no determination will be made until after our investigation is complete. We have ordered a copy of the policy, and will advise you of our position at the earliest possible time.

In the event we agree to defend this matter under a reservation of rights, we will assume the defense and reimburse our share of reasonable and necessary defense costs pursuant to Civil Code Section 2860. We will not be responsible for fees incurred prior to the tender of this claim.

Nothing in this letter should be construed as a waiver of St. Paul's rights under any of the provisions of the St. Paul policy or any other defense that St. Paul may have. St. Paul expressly reserves all of its rights to limit or deny coverage for this claim on the basis of these or any additional grounds.

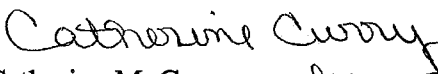
I will contact you shortly to discuss this claim. In the meantime, should you have any questions, please feel free to contact me at the address and number below. I am in the

EXHIBIT 3

process of obtaining information regarding the coverages afforded under various policies issued by St. Paul.

Sincerely,

ST PAUL FIRE & MARINE INSURANCE COMPANY


Catherine M. Curry
Senior Claim Specialist

Address: P.O. Box 14244
Orange, CA 92868
Phone: 714-620-1258
Fax: 714-620-1256
Email: catherine.curry@stpaul.com

cc: MARY NICOLINI
AON RISK TECHNOLOGY BROKERS
199 FREMONT STREET
SUITE 1400
SAN FRANCISCO, CA 94105

EXHIBIT 4



Southern California Claim Office
333 City Blvd. West, Suite 1100
Orange, CA 92868-2973
714-620-1200 TEL
800-221-3974
714-620-1256 FAX
www.stpaultravelers.com

CERTIFIED - RETURN RECEIPT REQUESTED

July 27, 2004

ERIC SCHULDT
E.PIPHANY, INC.
1900 S. NORFOLK STREET
SUITE 310
SAN MATEO, CA 94403

Re: Claim Number: TE09405602
Insured: E.PIPHANY, INC.
Claimant: SIGMA DYNAMICS, INC.
Date of Loss: TBD

Dear Mr. Schuldt:

This will follow our prior communication of July 23, 2004 acknowledging receipt of the claim captioned above.

After reviewing the coverages afforded under the policy issued by St. Paul and the other available information, we have determined that St. Paul does not have a duty to defend or indemnify E.Piphany, Inc. in this case. We realize you will likely dispute the allegations made by the plaintiff in this matter. By referring to those allegations in this letter, St. Paul does not mean to imply that any of them are true; however, St. Paul must refer to the allegations in determining any obligation it may have under the St. Paul policy applicable to this matter.

The Complaint, Sigma Dynamics, Inc. v E.Piphany, Inc., Case Number C04.0569 MJJ, is filed in United States District Court, Northern District of California. The complaint is for False Advertising, Unfair Competition and Unjust Enrichment. Sigma alleges that E.Piphany's advertisements that its' products are "all Java" and "fully JZEE" are false and give E.Piphany an unfair advantage over competitors. Sigma alleges that the representations which it alleges are false and misleading have occurred since August 2002. Sigma alleges damage to its business and good will and a loss of sales and profits. Sigma seeks injunctive relief, accounting for disgorged profits, compensatory and punitive damages and corrective advertisements.

EXHIBIT 4

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Based on our analysis of the St. Paul policy issued to E.Piphany, it is our opinion that St. Paul is not obligated to defend or indemnify E.Piphany in this case, based on the following conclusions:

- SIGMA does not seek damages for “bodily injury” or “property damage” or for injury or damage that was caused by an “event” as those terms are defined by the St. Paul policy.
- SIGMA does not seek damages for “advertising injury” or for “personal injury” as defined by the St. Paul policy.
- Exclusions in the policy for breach of contract, contract liability, deliberately breaking the law, material previously made known or used, poor quality or performance, product recall or wrong price description could further limit or preclude coverage if there were bodily injury, property damage, personal injury or advertising injury claims alleged.
- There is no coverage for injunctive or equitable relief, disgorgement of profits or attorneys’ fees and costs, as these are not damages.
- There is no coverage for punitive damages as it is against public policy in California for an insurance policy to afford such damages.

Policy TE09405602 was issued to E.Piphany Communications effective June 24, 2002 to June 24, 2003. Policy TE09405602 provides Technology General Liability Protection under form 47150 (7/01) which reads in part as follows:

What This Agreement Covers

Bodily injury and property damage liability. We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury or property damage that:

- happens while this agreement is in effect; and
- is caused by an event.

Bodily injury means any physical harm, including sickness or disease, to the physical health of other persons.

The St Paul

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We'll consider any of the following that happens at any time to be part of such physical harm, sickness or disease, if it results in or from such physical harm, sickness, or disease:

- Mental anguish, injury or illness.
- Emotional distress.
- Care, loss of services, or death.

Property damage means:

- physical damage to tangible property of others, including all resulting loss of use of that property; or
- loss of use of tangible property of others that isn't physically damaged.

Event means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

It is our position that the plaintiffs have not claimed damages for bodily injury or property damage. No damages are sought for physical damage to tangible property or for loss of use of tangible property.

The policy issued to E.Piphany, Inc. also provides coverage for personal Injury and advertising injury coverages as follows:

Personal injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your business activities; and
- is caused by a personal injury offense committed while this agreement is in effect.

Personal injury means injury, other than bodily injury or advertising injury, caused by a personal injury offense.

Personal injury offense means any of the following offenses:

- False arrest, detention or imprisonment.
- Malicious prosecution.

The **St Paul**

Page 4

- Wrongful entry into, or wrongful eviction from a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor or owner of that room, dwelling, or premises.
- Libel or slander, in or with covered material. .
- Making known to any person or organization covered material that disparages the business, premises, products, services, work or completed work of others.
- Making known to any person or organization covered material that violates an individual's right of privacy.

Advertising injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered advertising injury that:

- results from the advertising of your products, work or completed work; and
- is caused by an advertising injury offense committed while this agreement is in effect.

Advertising injury means injury, other than bodily injury or personal injury, caused by an advertising injury offense.

Advertising injury offense means any of the following offenses:

- Libel or slander, in or with covered material.
- Making known to any person or organization covered material that disparages the business, premises, products, services, work or completed work of others.
- Making known to any person or organization covered material that violates a person's right of privacy.
- Unauthorized use of any advertising material, or any slogan or title of others in your advertising.



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The complaint does not allege any of the personal injury or advertising injury offenses. Thus, it is our position that the personal injury and advertising injury coverages will not respond to this claim.

The St. Paul policy contains the following exclusions, which could apply if the plaintiffs were to allege claims for bodily injury, property damage, personal injury or advertising injury offenses:

Exclusions - What This Agreement Won't Cover

Breach of Contract. We won't cover advertising injury that results from the failure of any protected person to do what is required by a contract or agreement.

Contract liability. We won't cover injury or damage for which the protected person has assumed liability under any contract or agreement.

But we won't apply this exclusion to injury or damage for which the protected person would have liability without the contract or agreement.

Deliberately breaking the law. We won't cover personal injury or advertising injury that results from:

- the protected person knowingly breaking any criminal law; or any person or organization breaking any criminal law with the consent or knowledge of the protected person.

False material. We won't cover personal injury or advertising injury that results from false written or spoken material which:

- was made known by or for the protected person; and
- the protected person knew was false when it was made known

Impaired Property. We won't cover property damage to impaired property, or to property that isn't physically damaged, that results from:

- your products that are faulty or dangerous;
- your completed work that is faulty or dangerous; or
- a delay or failure in fulfilling the terms of a contract or agreement.

But we won't apply this exclusion to the loss of use of property, other than your products or your completed work, that results from the sudden and accidental physical damage to:

- your products after they've been put to their intended use; or

The St Paul

Page 6

- your completed work after it has been put to its intended use.

Impaired property means tangible property, other than your products or your completed work, that can be restored to use by nothing more than:

- an adjustment, repair, replacement, or removal of your products, or your completed work, that forms a part of such tangible property; or
- your fulfilling the terms of a contract or agreement.

Material previously made known. We won't cover personal injury or advertising injury that results from written or spoken material which was first made known before this agreement went into effect.

Poor quality or performance. We won't cover advertising injury that results from the failure of your products, your work, or your completed work to conform with advertised quality or performance.

Product recall. We won't cover any loss, cost, or expense that is incurred by your or other and results from any recall, removal, or withdrawal of:

- impaired property;
- your products; or
- your completed work;

from the market or from use by any person or organization, for any reason.

Nor will we cover any loss, cost, or expense that is incurred by your or others and results from the:

- loss of use;
- adjustment, inspection, repair;
- replacement; or
- disposal;

of such property, products, or completed work.

Wrong price description. We won't cover advertising injury that results from the wrong description of the price of your products, your work, or your completed work.

With respect to the company's duty to defend, the policy provides as follows:

Right and duty to defend. We'll have the right and duty to defend any claim or suit for covered injury or damage made or brought against any protected person. We'll do so even if any of the allegations of any such claim or suit are groundless, false or fraudulent. But we have no duty to perform other acts or services. And our duty to defend claims or suits ends

The **St Paul**

Page 7

when we have used up the limits of coverage that apply with the payment of judgments, settlements or medical expenses.

We'll have the right to investigate any claim or suit to the extent that we believe is proper. We'll also have the right to settle any claim or suit within the available limits of coverage.

Claim means a demand which seeks damages.

Suit means a civil proceeding which seeks damages. It includes:

- an arbitration proceeding for such damages to which the protected person must submit or submits with our consent; and
- any other alternative dispute resolution proceeding for such damages to which the protected person submits with our consent.

Injury or damage means bodily injury, personal injury, advertising injury or property damage or premises damage.

In accordance with Section 2695.7(b)3 of the California Insurance Regulations, if you disagree with our determination concerning coverage for this claim, you may have this matter reviewed by the California Department of Insurance, Claims Service Bureau, 300 S. Spring Street, 11th floor, Los Angeles, California 90013, telephone (800) 927-4357 or (213) 897-8921.

The above information is advisory only, and is not intended to either encourage or discourage you from contacting the California Department of Insurance. If you elect to send any correspondence regarding our position concerning coverage for this claim, we ask that you please forward us copies of all such correspondence.

St. Paul's coverage determination is based on the information made available to date. If you have any additional information which you believe may affect our determination, please provide us with this information at your earliest opportunity.


Thank you for your cooperation. Please call me at 714-620-1258 if you have any questions.

The St Paul

Page 8

Sincerely,

ST PAUL FIRE & MARINE INSURANCE COMPANY

Catherine Curry
Catherine M. Curry
Senior Claim Specialist 

cc: MARY NICOLINI
AON RISK TECHNOLOGY BROKERS
199 FREMONT STREET
SUITE 1400
SAN FRANCISCO, CA 94105

EXHIBIT 5



James S. Price, ARM
Senior Claim Consultant
AON Risk Services
Direct: 415.486.7230
Facsimile: 415.486.7040

November 22, 2004

CERTIFIED MAIL Return Receipt Requested

Catherine M. Curry
Senior Claim Representative
St. Paul/Travelers
Southern California Claims Office
333 City Blvd. West, Suite 1100
ORANGE, CA. 92868-2973

Re:	Your Insured:	E.piphany, Inc.
	Policy Number(s):	TE 09405602 (6/24/2002 to 6/24/2003)
	Your Claim No.:	TE09405602
	Case:	Sigma Dynamics, Inc. v. E.piphany Civil Case Number C04 0569 MJJ US District Court, Northern District of California
	Subject:	Request for Reconsideration of Disclaimer

Dear Ms. Curry:

I have been requested by our client, E.piphany, Inc. to review your letter of July 27, 2004 wherein St. Paul/Travelers ["St. Paul"] denied coverage for this loss.

After reviewing the facts, your letter, and the complaint, we respectfully request that St. Paul reconsider their declination. We believe that coverage has been triggered under the "**Personal injury liability**" and "**Advertising injury liability**" offenses. As you are aware, there are four (4) elements that must be satisfied before coverage will be triggered under these coverages:

- 1) E.piphany must have engaged (or alleged to have engaged) in a "Personal injury liability" or "Advertising injury liability" offense as defined in the St. Paul policy;
- 2) The allegations in the Sigma complaint must fit into one of the enumerated "offenses";
- 3) The offense must have arisen out of "covered material" as that term is defined in the policy; and
- 4) There are no applicable exclusions that would exclude coverage.

As we will demonstrate, we believe all conditions have been met and coverage has been triggered under the policy.

Aon Risk Services, Inc. of Northern California Insurance Services • License #0363334
199 Fremont Street, Suite 1400 • San Francisco, California 94105 • tel: (415) 486-7000 • fax: (415) 486-7029
<http://www.aon.com>

EXHIBIT 5



Aon Risk Services

St. Paul Insurance
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I. Standard of Review.

It is well established in California that the interpretations of coverage provisions are construed broadly and exclusions narrowly¹. If semantically permissible, the policy will be given such construction as will fairly achieve its object of providing indemnity for the loss to which the insurance relates². Further, the rule of interpreting insurance policy language is that it should be "interpreted, as laypersons would interpret them"³. In determining a policy's plain meaning, the test is not what the insurer or its attorneys intended the policy to mean but what a reasonable person would understand the policy to mean⁴.

II. St. Paul's Duty to Defend

St. Paul's duty to defend their insured is found on Page 4 of 28 of the St. Paul policy that states in relevant part:

Right and duty to defend a protected person.

We'll have the right and duty to defend any protected person against a claim or suit for injury or damage covered by this agreement. We'll have such right and duty even if all of the allegations of the claim or suit are groundless, false, or fraudulent...

"Injury or damage" is defined on page 5 of 28 of the policy as, *inter alia*:

- Bodily injury, personal injury, or advertising injury

Therefore, under the express terms of the policy, St. Paul has a duty to defend their insured against claims or suits if *personal injury* or *advertising injury* claims are made against their insured.

III. "Disparagement" or "Injurious Falsehood" is a Covered Offense Under the Policy

Coverage for this loss is found under the St. Paul policy under both the **Personal injury liability** and the **Advertising injury liability** sections of the policy found on pages 4 and 5 of the policy⁵. The coverage grant under the **Personal injury liability** section states in relevant part:

We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your business activities; and
- is caused by a *personal injury offense* committed while this agreement is in effect.

¹ See *State Farm Auto Insurance V. Partridge* 10 Cal. 3rd 94, 109

² See *Reserve Insurance Company v. Pisciotto* 30 Cal. 3rd 800, 807-808

³ See *Accord, American Star Insurance Company v. Insurance Company of the West*, 232 Cal. App. 3rd 1320 (4th District 1991)

⁴ See *Montrose Chemical Corp v. Admiral Insurance Company* 10 Cal. 4th 645, 667

⁵ St. Paul Fire and Marine policy form 47150 Rev. 7-01 (2001)



Aon Risk Services

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Personal injury means injury, other than bodily injury or advertising injury, that's caused by a *personal injury offense*.

The coverage grant under the **Advertising injury liability** section contains a similar coverage grant:

We'll pay amounts any protected person is legally required to pay as damages for covered *advertising injury* that:

- results from the advertising of your products, your work, or your completed operations; and
- is caused by an *advertising injury offense* committed while this agreement is in effect...

Advertising injury means injury, other than bodily injury or personal injury, that's caused by an *advertising injury offense*.

The *Personal injury offense* and *Advertising offense* contain identical offenses that are relevant to the coverage issues raised in the Sigma complaint:

- Making known to any person or organization *covered material* that disparages the business, premises, products, services, work, or completed work of others⁶.

"Covered material" is a defined term in the policy and is defined broadly as:

... any material in any form of expression, including material made known in or with any electronic means of communication, such as the Internet.

Therefore, it is clear that the St. Paul policy provides cover for "disparagement" under both the Advertising injury and Personal injury offense coverage.

IV. All the Elements of "Disparagement" or "Injurious Falsehood" are Alleged in the Complaint

In determining if an insurer owes a duty to defend, one must compare the allegations of the complaint with the terms of the policy. It is well established in California that the carrier must defend a suit that potentially seeks damages within the coverage of the policy⁷. Implicit in this rule is the well-established principle that the duty to defend is broader than the duty to indemnify.

In reviewing the allegations of the complaint, it is clear that the plaintiff is making claims of disparagement against your insured. Disparagement (also known as "injurious falsehood")

⁶ See definitions for Personal injury offense and Advertising injury offense on page 3 of 28 and 4 of 28 respectively in the St Paul policy form 47150 Rev. 7-01 (2001).

⁷ Gray v. Zurich Ins. Co. 65 Cal.2d 263



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is a well-established and recognized tort. In order to be successful in recovering under this tort, a plaintiff must establish the following elements:

- a) The false statement must be of a kind calculated to damage the pecuniary interests of the plaintiff;
- b) Publication to a third party;
- c) "Malice" in the publication;
- d) Resulting special damages to the plaintiff, in the form of pecuniary loss.

A careful review of the Sigma Complaint reveals that all of the elements necessary to establish a disparagement claim against your insured are in fact alleged in the complaint. We direct your attention to the specific allegations in the Sigma complaint⁸ in which Sigma alleges your insured committed the covered offense:

1) Sigma Alleges E.piphany made False Statement of the Kind Calculated to Damage Sigma's Pecuniary interests

We call your attention to the First Cause of Action in the complaint wherein Sigma alleges that your insured made false statements calculated to damage Sigma's pecuniary interest:

- i) [E.piphany used] false and misleading descriptions and representations of fact...⁹
- ii) By reason of E.piphany's acts, Sigma Dynamics has suffered and will continue to suffer damage to its business... and the loss of sales and profits it would have made but for E.piphany's acts...¹⁰

2) Sigma Alleges Publication of "Covered Materials" to Third Party

The following allegations in the complaint establish Sigma's contention that E.piphany used "covered material" as defined in the St. Paul policy to communicate to third parties:

- i) [E.piphany used] false and misleading descriptions and representations of fact in commercial advertising or promotion.¹¹
- ii) E.piphany has made, and continues to make, false and misleading statements about its products and their performance. For example, at some point in 2002, E.piphany began advertising that its product suite

⁸ Sigma Dynamics, Inc. v. E.piphany, Civil Case Number C04 0569 MJJ; US District Court, Northern District of California

⁹ Ibid paragraph 41

¹⁰ Ibid paragraph 44

¹¹ Ibid paragraph 41



Aon Risk Services

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is "all Java" or "fully J2EE" a core par of its position in the market, and claims a competitive advantage over other software vendors....¹²

- iii) On October 17, 2002 E.piphany issued a Q3 02 earnings press release....¹³
- iv) On January 14, 2003, E.piphany published a press release claiming....¹⁴
- v) E.piphany has made, and continues to make, literally false, misleading, and deceptive representations, both oral and written, regarding its products to investors and potential investors, industry analyst, and customers and potential customers, including Sigma customers."¹⁵

While our client takes strong exception to Sigma's allegations that the covered materials where false or deceptive, these allegations nonetheless are made in support of Sigma's disparagement claims. Further, the means by which Sigma alleges E.piphany published these materials clearly comes within the definition of "covered materials" as defined and required under the St. Paul policy.

3) "Malice" in the Publication of Material

In order to establish a claim of disparagement, Sigma must establish that E.piphany acted with malice. Black's Law Dictionary defines "Malice" as the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent¹⁶. Some insurers have taken the position that there can be no coverage for such claims in California given the operation of Insurance Code Section 533 wherein "[a]n insurer is not liable for a loss caused by the wilful act of the insured...."

California courts have addressed this issue in detail in two appellate cases: *Downey Venture v. LMI Ins. Co*¹⁷, and *Butcher v. Truck Insurance Exchange*.¹⁸ In both of these cases, the insurer argued that there was no duty to defend a "malicious prosecution" offense given that in order for damages to be awarded under their policies, the insured would have to be found to have acted "willfully", and therefore such damages would not be insurable as against California public policy as articulated under Insurance Code Section 533. The carriers argued that if there was no duty to indemnify, there could be no duty to defend. In reviewing policy language virtually identical to the St. Paul policy (that contains

¹² Ibid paragraph 15

¹³ Ibid paragraph 20

¹⁴ Ibid paragraph 25

¹⁵ Ibid paragraph 37

¹⁶ Black's Law Dictionary 6th Edition at page 956

¹⁷ 66 Cal. App. 4th 478 (Sep. 1998)

¹⁸ 77 Cal. App 4th 1442 (Feb. 2002)



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specific policy provisions for the defense of personal injury and advertising injury offenses) the *Downey Venture* and *Butcher* courts rejected these arguments in holding that:

"[T]he public policy precluding indemnification coverage for 'wilful acts,' as expressed in [Insurance Code] section 533, bars indemnification for any malicious prosecution claim for which an insured is personally liable in California, even though such coverage was expressly promised in the policy; however, such public policy does not preclude a defense and an insurer promising coverage for malicious prosecution is nonetheless liable to provide a defense to such a claim."¹⁹ [Emphasis added]

While the *Downey Venture* and *Butcher* courts dealt specifically with the tort of malicious prosecution, the tort of disparagement also requires the establishment of "malice" as a necessary element in establishing the tort. The Court's holdings would apply to any advertising or personal injury offenses that require "malice" as an element of the covered tort. Therefore under California law, St. Paul has the duty to: 1) provide a defense for such personal and advertising injury torts under their policy; 2) provide a defense and indemnification for such claims which resulted in an award based on their insureds vicarious liability and 3) provide defense and indemnification to the extent that such indemnification is not held to be against public policy²⁰.

We now call your attention to the Sigma complaint wherein it is alleged your insured acted "willfully" as an element of disparagement:

- i) E.piphany has acted willfully, deliberately, and in bad faith²¹;
- ii) Moreover, because this is an exceptional case, involving calculated and willful misconduct by E.piphany, Sigma is entitled to...²²;
- iii) E.piphany has acted willfully, deliberately, and in bad faith.²³;
- iv) E.piphany's acts of unfair competition have been committed with full knowledge and constitute malicious, oppressive, and fraudulent conduct...²⁴;
- v) E.piphany has acted intentionally, willfully, deliberately, maliciously, egregiously, and in bad faith...²⁵

While our client disagrees with these assertions, Sigma nonetheless is alleging "malice" as an element as is required to maintain a disparagement claim.

¹⁹ *Butcher v. Truck Insurance Exchange* 77 Cal. App 4th 1442 (Feb. 2002)

²⁰ *Downey v. LMI*, supra

²¹ *Ibid* paragraph 42

²² *Ibid* paragraph 46

²³ *Ibid* paragraph 49

²⁴ *Ibid* paragraph 53

²⁵ *Ibid* paragraph 61



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4) Sigma Alleges Resulting Special Damages to the Plaintiff, in the form of Pecuniary Loss

"Pecuniary Loss" is defined as "A loss of money, or of something by which money or something of money value may be acquired"²⁶. A review of the Sigma complaint clear reveals that they are seeking these damages:

- i) That E.piphany pay compensatory damages to Sigma Dynamics in an amount to be determined at trial...²⁷
- ii) 2) E.piphany [has] damaged Sigma's market share, sales, profits...

The complaint makes clear that Sigma is alleging and seeks pecuniary losses from your insured.

V. Exclusions

We have not identified any exclusion in the St. Paul policy that would eliminate St. Paul's duty to provide a defense to their insured in this matter.

VI. Conclusion

Review of the Sigma Dynamics, Inc. claim clearly demonstrates that they are seeking damages for alleged disparagement. The tort of "disparagement" is an enumerated offense under both the advertising and personal injury coverage provided to E.piphany under St. Paul's policy. While it remains on open question as to St. Paul's duties to indemnify E.piphany under the policy, our California courts have held that there is at least a duty to defend when the policy (such as St. Paul's) provides for the defense of such personal or advertising offenses. Therefore, given the allegations in the complaint, St. Paul has a duty to defend their insured for this claim.

VII. NON-WAIVER of E.piphany's Rights

St. Paul's wrongful declination of this claim has placed them in breach of their contractual obligations owed to E.piphany under the policy at law and in equity. In requesting that St. Paul reconsider the specific issues of coverage raised in this letter, our client's requests should not be construed as a waiver of *any* rights they may have under the policy, at law or in equity. All of our client's rights are expressly reserved.

²⁶ Black's Law Dictionary, *supra* at page 1131

²⁷ Ibid Prayer for Relief, page 14, line 3



Aon Risk Services

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We thank you in advance for your reconsideration. If you should have any questions regarding the issues raised in this letter, we would be please to discuss them with you. We look forward to working with you in resolving this issue.

Please be reminded that the California Fair Claims Practices Act requires a substantive written response within fifteen (15) days.

Very truly yours,



James S. Price, ARM
Senior Claims Consultant

cc: Eric Schuldt
E.piphany, Inc.
1900 S. Norfolk Street
Suite 3100
San Mateo, CA. 94403

Marilyn Sardi,
Vice President
Aon Risk Services

Jeanne Deni, Esq.
Vice President
Aon Financial Services Group

EXHIBIT 6



St. Paul Travelers
Southern California Claim Office
333 City Blvd. West, Suite 1100
Orange, CA 92868-2973
714-620-1200 TEL
800-221-3974
714-620-1256 FAX
www.stpaultravelers.com

CERTIFIED - RETURN RECEIPT REQUESTED

December 9, 2004

ERIC SCHULDT
E.PIPHANY, INC.
1900 S. NORFOLK STREET
SUITE 310
SAN MATEO, CA 94403

Re: Claim Number: TE09405602
Insured: E.PIPHANY, INC.
Claimant: SIGMA DYNAMICS, INC.
Date of Loss: TBD

Dear Mr. Schuldt:

This is in response to communication we have received from James Price of AON Risk Services, sent on your behalf. Unfortunately, we are not in a position to reverse our earlier position on this matter, and we do not feel that Sigma Dynamics has alleged a personal injury or advertising injury offense.

The Complaint, Sigma Dynamics, Inc. v E.Piphany, Inc., Case Number C04 0569 MJJ, is filed in United States District Court, Northern District of California. The complaint is for False Advertising, Unfair Competition and Unjust Enrichment. Sigma alleges that E.Piphany's advertisements that its' products are "all Java" and "fully JZEE" are false and give E.Piphany an unfair advantage over competitors. Sigma alleges that the representations which it alleges are false and misleading have occurred since August 2002. Sigma alleges damage to its business and good will and a loss of sales and profits. Sigma seeks injunctive relief, accounting for disgorged profits, compensatory and punitive damages and corrective advertisements.

Based on our analysis of the St. Paul policy issued to E.Piphany, it is our opinion that St. Paul is not obligated to defend or indemnify E.Piphany in this case, based on the following conclusions:

EXHIBIT 6

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- SIGMA does not seek damages for "bodily injury" or "property damage" or for injury or damage that was caused by an "event" as those terms are defined by the St. Paul policy.
- SIGMA does not seek damages for "advertising injury" or for "personal injury" as defined by the St. Paul policy.
- Exclusions in the policy for breach of contract, contract liability, deliberately breaking the law, material previously made known or used, poor quality or performance, product recall or wrong price description could further limit or preclude coverage if there were bodily injury, property damage, personal injury or advertising injury claims alleged.
- There is no coverage for injunctive or equitable relief, disgorgement of profits or attorneys' fees and costs, as these are not damages.
- There is no coverage for punitive damages as it is against public policy in California for an insurance policy to afford such damages.

Policy TE09405602 was issued to E.Piphany Communications effective June 24, 2002 to June 24, 2003. Policy TE09405602 provides Technology General Liability Protection under form 47150 (7/01) which reads in part as follows:

Personal injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your business activities; and
- is caused by a personal injury offense committed while this agreement is in effect.

Personal injury means injury, other than bodily injury or advertising injury, caused by a personal injury offense.

Personal injury offense means any of the following offenses:

- False arrest, detention or imprisonment.
- Malicious prosecution.
- Wrongful entry into, or wrongful eviction from a room, dwelling, or premises that a person occupies, if such entry or eviction is committed

Page 3

by or for the landlord, lessor or owner of that room, dwelling, or premises.

- Libel or slander, in or with covered material. .
- Making known to any person or organization covered material that disparages the business, premises, products, services, work or completed work of others.
- Making known to any person or organization covered material that violates an individual's right of privacy.

Advertising injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered advertising injury that:

- results from the advertising of your products, work or completed work; and
- is caused by an advertising injury offense committed while this agreement is in effect.

Advertising injury means injury, other than bodily injury or personal injury, caused by an advertising injury offense.

Advertising injury offense means any of the following offenses:

- Libel or slander, in or with covered material.
- Making known to any person or organization covered material that disparages the business, premises, products, services, work or completed work of others.
- Making known to any person or organization covered material that violates a person's right of privacy.
- Unauthorized use of any advertising material, or any slogan or title of others in your advertising.

The complaint does not allege any of the personal injury or advertising injury offenses. We do not feel that falsely advertising the merits and qualities of one's own products,

Page 4

which is the conduct alleged in the complaint, is the equivalent of the disparagement of someone else's products. The plaintiff in this case has not alleged that E.Piphany has disparaged the products of Sigma Dynamics, but only that E.Piphany has gained an unfair advantage by falsely advertising the capabilities of its own products. Thus, it is our position that the personal injury and advertising injury coverages will not respond to this claim.

The St. Paul policy contains the following exclusions, which could apply if the plaintiffs were to allege claims for bodily injury, property damage, personal injury or advertising injury offenses:

Exclusions - What This Agreement Won't Cover

False material. We won't cover personal injury or advertising injury that results from false written or spoken material which:

- was made known by or for the protected person; and
- the protected person knew was false when it was made known

Material previously made known. We won't cover personal injury or advertising injury that results from written or spoken material which was first made known before this agreement went into effect.

Poor quality or performance. We won't cover advertising injury that results from the failure of your products, your work, or your completed work to conform with advertised quality or performance.

Wrong price description. We won't cover advertising injury that results from the wrong description of the price of your products, your work, or your completed work.

With respect to the company's duty to defend, the policy provides as follows:

Right and duty to defend. We'll have the right and duty to defend any claim or suit for covered injury or damage made or brought against any protected person. We'll do so even if any of the allegations of any such claim or suit are groundless, false or fraudulent. But we have no duty to perform other acts or services. And our duty to defend claims or suits ends when we have used up the limits of coverage that apply with the payment of judgments, settlements or medical expenses.

We'll have the right to investigate any claim or suit to the extent that we believe is proper. We'll also have the right to settle any claim or suit within the available limits of coverage.

Page 5

Claim means a demand which seeks damages.

Suit means a civil proceeding which seeks damages. It includes:

- an arbitration proceeding for such damages to which the protected person must submit or submits with our consent; and
- any other alternative dispute resolution proceeding for such damages to which the protected person submits with our consent.

Injury or damage means bodily injury, personal injury, advertising injury or property damage or premises damage.

In accordance with Section 2695.7(b)3 of the California Insurance Regulations, if you disagree with our determination concerning coverage for this claim, you may have this matter reviewed by the California Department of Insurance, Claims Service Bureau, 300 S. Spring Street, 11th floor, Los Angeles, California 90013, telephone (800) 927-4357 or (213) 897-8921.

The above information is advisory only, and is not intended to either encourage or discourage you from contacting the California Department of Insurance. If you elect to send any correspondence regarding our position concerning coverage for this claim, we ask that you please forward us copies of all such correspondence.


St. Paul's coverage determination is based on the information made available to date. If you have any additional information which you believe may affect our determination, please provide us with this information at your earliest opportunity.

Thank you for your cooperation. Please call me at 714-620-1258 if you have any questions.

Page 6

Sincerely,

ST PAUL FIRE & MARINE INSURANCE COMPANY

Catherine Curry
Catherine M. Curry
Senior Claim Specialist 

cc: MARY NICOLINI
AON RISK TECHNOLOGY BROKERS
199 FREMONT STREET
SUITE 1400
SAN FRANCISCO, CA 94105

ENCLOSURE
10/12/08
10/12/08
10/12/08
10/12/08

EXHIBIT 7



St. Paul Travelers
 Claim - Technology
 508T
 385 Washington Street
 St. Paul, MN 55102
 651-310-3344 FAX
 www.stpaultravelers.com

January 10, 2005

James S. Price, ARM
 Aon Risk Services, Inc.
 199 Fremont Street, Suite 1400
 San Francisco, CA 94105

VIA FACSIMILE AND US MAIL
 Fax: 415-486-7040

Re: Claim Number: TE09405602
 Insured: E.PIPHANY, INC.
 Claimant: SIGMA DYNAMICS, INC.
 Date of Loss: TBD

Dear Mr. Price:

I am the supervisor on the above referenced matter. I have reviewed the Complaint along with your November 22 and December 16 letters to Catherine Curry outlining your position why St. Paul has a duty to defend E.piphany, Inc. (hereinafter "E.piphany") in the complaint filed in U.S. District Court by Sigma Dynamics, Inc., (hereinafter "Sigma").

Based on my review of the Complaint, letters and applicable case law, I agree with the position taken by Ms. Curry that St. Paul does not have a duty to defend E.piphany in this matter and I respectfully disagree with your position. For the reasons stated herein, St. Paul maintains its position that it has no duty to defend E.piphany in this matter.

Briefly, by way of background, the Complaint, Sigma Dynamics, Inc. v E.piphany, Inc., Case Number C04 0569 MJJ, is filed in United States District Court, Northern District of California. The complaint is for False Advertising, Unfair Competition and Unjust Enrichment. Sigma alleges that E.piphany's advertisements that its' products are "all Java" and "fully JZEE" are false and give E.piphany an unfair advantage over competitors. Sigma alleges that the representations, which it alleges are false and misleading, have occurred since August 2002. Sigma alleges damage to its business and good will and a loss of sales and profits. Sigma seeks injunctive relief, accounting for disgorged profits, compensatory and punitive damages and corrective advertisements.

Some of the alleged false and misleading statements Sigma alleges E.piphany made include:

- E.piphany was "the J2EE player in the marketplace;" a 10/17/02 Q302 earnings press release.
- E.piphany had delivered "one of the first end to end J2EE products and product platforms;" a 1/23/03 Q402 earnings conference call.

EXHIBIT 7

- "J2EE compliance. The Suite is developed on the Java Two, Enterprise Edition, or J2EE, development platform;" E.piphany's 2002 Annual Report.
- E.piphany is "the only full-footprint vendor who actually has a full J2EE architecture, and that doesn't mean that you just, you know, cooperate with, I mean fully embedded from the ground up, all Java, we're the only vendor that has that, and I think we have a couple year lead;" E.piphany's CEO statement on 10/20/03.
- E.piphany E.6 CRM suite provides "a fully integrated and certified one-vendor solution that delivers a true J2EE, standards-based architecture;" 1/14/03 E.piphany press release.
- "E.piphany offers the only full-footprint CRM suite natively built on a service-orientated J2EE architecture;" 8/4/03 E.piphany press release.
- E.piphany's "real-time Interaction Advisor technology and strong analytics, and our J2EE architecture were the key drivers for KLM to choose us as a partner;" 10/03 press release.
- "All E.piphany E.6 solutions are built on the industry's most modern and innovative customer relationship management (CRM) architecture. Based on the Java 2 platform, Enterprise Edition (J2EE), and using a service-orientated architecture, E.6 provides maximum flexibility for faster implementation and integration...." 2/10/04 E.piphany website.
- "E.piphany is the first end-to-end CRM suite designed and built on a unified J2EE-based platform;" 8/20/02 E.piphany press release.

Sigma further alleges that E.piphany's deceptive statements about its products have misled prominent industry research firms, including Gartner Group and Patricia Seybold Group, to publish research reports which replicate E.piphany's false statements. In turn, E.piphany has misled investors and customers who rely on these reports when making investment and purchasing decisions. (Complaint, paragraph 30.)

Sigma alleges it has been damaged by E.piphany and others statements in the following way:

The foregoing literally false, deceptive, and misleading representations by E.piphany about its technology have damaged, and continue to present the likelihood of damage, to Sigma Dynamics. E.piphany's literally false, deceptive, and misleading representations have damaged Sigma's market share, sales, profits, business relationships, reputation, and goodwill, and have caused potential purchasers of Sigma's products and services to choose E.piphany's products and services instead of Sigma's. Such representations have caused E.piphany to gain, and Sigma to lose, profits, market share, reputation, and goodwill. (Complaint, paragraph 39.)

The Complaint has five causes of action, namely, False Advertising & Unfair Competition, False Advertising, Common Law Unfair Competition, Unfair Competition and Unjust Enrichment. Sigma seeks equitable and monetary damages from E.piphany.

Your position is that St. Paul has, at least, a duty to defend E.piphany because "the *factual allegations* in the complaint supports a claim for disparagement by an element-by-element, fact-by-fact analysis of the complaint." (p.2, Price 12/16/04 letter.) Other than stating the four elements you claim comprise the tort of Disparagement or "injurious falsehood" and making the conclusion that "each of the factual elements necessary to establish a disparagement claim against your insured is in fact alleged in the Sigma Complaint" you have provided no legal support for your conclusion. *Id.* In fact, case law does not support your position.¹

According to the California Supreme court, in defamation actions the First Amendment requires that the statement on which the claim is based must specifically refer to, or be "of and concerning," the plaintiff in some way. *Blatty v. New York Times Company*, 42 Cal.3d 1033 at 1042, 728 P.2d 1177 at 1182, 232 Cal.Rptr. 542 at 547 (1986). The "of and concerning" or specific reference requirement limits the right of action for injurious falsehood, granting it to those who are the direct object of criticism and denying it to those who merely complain of nonspecific statements that they believe cause them some hurt. *Id.* 42 Cal.3d at 1044, 728 P.2d at 1183, 232 Cal.Rptr at 548. In the present case none of the alleged statements made by E.piphany were of and concerning Sigma. Thus, the complaint does not allege facts that would support a claim of defamation or injurious falsehood.

In addition, the statements allegedly made by E.piphany are nothing more than alleged false representations or false advertising of the qualities of the insured's products or services. Such statements do not fall within the ordinary meaning of an advertising injury. See, *Applied Bolting Technology Products, Inc. v. United States Fidelity & Guaranty Company* 942 F.Supp. 1029, 1033-1035 (1996), *affd.*, 118 F.3d 1574 (3d Cir. 1997).

Finally, Sigma's complaint does not allege facts that trigger coverage under the personal injury coverage grant in the St. Paul policy. First, the alleged statements made by E.piphany are all made in the course of E.piphany's advertising and are therefore excluded from coverage under the definition of personal injury in the policy. Second, even assuming the alleged statements were not made in the course of E.piphany's advertising there are no allegations that E.piphany made any specific statements, placed any advertisements, or published any material that directly made any negative comments about products sold by Sigma, with the intent to induce Sigma's customers not to purchase from them. Thus there is no conduct that would amount to trade libel or product disparagement as those terms are understood under the personal injury provision of the CGL policy. See *Cables & Accessories, Inc. v. Hartford Insurance Co.*, 2002 WL 77114 (Cal.App.6 Dist) Unpublished, citing *Aetna Cas. & Sur. Co. v. Centennial Ins. Co* (9th Cir. 1988) 838 F.2d 346, 350-352; *Nichols*

¹ Neither the *Venture* nor *Butcher* cases are on point. The facts of those cases differ significantly from the facts alleged by Sigma. Neither pertain to alleged false or misleading statements by a party regarding its products or services. Therefore they are not dispositive of the issue in the present matter.

v. Great American Ins. Companie, 169 Cal.App.3d 766, 773-775, 215 Cal.Rptr. 416 (1985).

For the reasons stated herein, St. Paul respectfully denies E.piphany's request for a defense and indemnification in this matter.

In accordance with Section 2695.7(b)3 of the California Insurance Regulations, if you disagree with our determination concerning coverage for this claim, you may have this matter reviewed by the California Department of Insurance, Claims Service Bureau, 300 S. Spring Street, 11th floor, Los Angeles, California 90013, telephone (800) 927-4357 or (213) 897-8921.

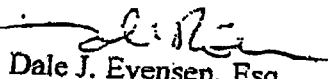
The above information is advisory only, and is not intended to either encourage or discourage you from contacting the California Department of Insurance. If you elect to send any correspondence regarding our position concerning coverage for this claim, we ask that you please forward us copies of all such correspondence.

St. Paul's coverage determination is based on the information made available to date. If you have any additional information which you believe may affect our determination, please provide us with this information at your earliest opportunity.

Thank you for your cooperation. Please call me at 651-310-8561 if you have any questions.

Sincerely,

ST PAUL FIRE & MARINE INSURANCE COMPANY


Dale J. Evensen, Esq.
Technology Claim Attorney

cc: Eric Schuldt
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1900 S. Norfolk Street, Suite 310
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Mary Nicolini
AON Risk Technology Brokers
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San Francisco, CA 94105

EXHIBIT 10



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MC 9275-NB08T
St. Paul, MN 55102

Telephone: (651) 310-5173
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February 6, 2008

Gwen Nielsen
Associate General Counsel
Infor Global Solutions
500 West Madison
Suite 2100
Chicago, IL 60661

RE: Claim No.: VWB2006
Policy No.: TE09405602
Policy Holder: E.PIPHANY, INC.
Claimant: SIGMA DYNAMICS, INC.
Case Name: *Sigma Dynamics, Inc. v. E.Piphany, Inc.*, Case No. 04-0569

Dear Gwen:

It was nice to speak with you last week. You had asked St. Paul Fire and Marine Insurance Company to re-evaluate its denial of coverage of the allegations made against E.piphany in the case captioned *Sigma Dynamics, Inc. v. E.piphany, Inc.*, Case No. 04-0569, formerly pending in the United States District Court of California, San Francisco division. You asked us to re-evaluate our coverage position based on our prior citation of the United States District Court for the western district of Wisconsin's decision in *Acme United Corp. v. St. Paul Fire and Marine Ins. Co* which was overturned after we denied coverage of E.piphany's claim. You have asked for a detailed explanation of why the current *Acme* decision should not govern the outcome of E.piphany's coverage as well. As I explained, the allegations in the *Acme* case differ substantially from the allegations made in the case against E.piphany. Therefore, the *Acme* decision does not change our determination that Sigma's allegations against E.piphany are not covered.

I evaluated coverage based on the allegations contained in the First Amended Complaint and through the specter of the Seventh Circuit's analysis in *Acme United Corp. v. St. Paul Fire and Marine Ins. Co.*, 214 Fed.Appx. 596 (7thCir. 2007). The gist of Sigma's complaint against E.piphany is that E.piphany misrepresented that its software was built on a Java and/or J2EE platform when, in fact, it was not. According to Sigma, E.piphany's misrepresentations "damaged and continue to present the likelihood of damage, to Sigma Dynamics. E.piphany's literally false deceptive and misleading representations have damaged Sigma's market share, sales, profits, business relationships, reputation, goodwill, and have caused potential purchasers of Sigma

EXHIBIT 10

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 February 6, 2008
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products and services to choose E.piphany's products and services instead of Sigma's." Sigma does not complain that E.piphany made any disparaging remarks about its products or indeed, that E.piphany compared its products to Sigma's products.

Because Sigma does not allege that E.piphany made such allegations, the holding in *Acme* is inapposite. In *Acme*, Fiskars Brands, a maker of stainless steel scissors, sued Acme, alleging that Acme's representations that its scissors had a titanium cutting edge that made them "3 times harder than stainless steel," and that the "blades stay sharper, longer" were false. The *Acme* court determined that St. Paul Fire and Marine Insurance Company should have provided a defense for Acme because the Fiskars complaint alleged that in its advertising, Acme made false comparisons to stainless steel products such as those distributed by Fiskars. The court held that such comparisons constituted disparagement. It stated:

The operative term here is "disparage." Disparage means "to discredit or bring reproach upon by comparing with something inferior ..." *Webster's Third New International Dictionary (unabridged)* 653 (1981); also *Black's Law Dictionary* 483 (7th ed. 1999) (defining disparage as "[to] dishonor (something or someone) by comparison" or "[t]o unjustly discredit or detract from the reputation of (another's property, product or business)"). Further, as we have noted in other cases, "disparagement [could] result [] from false comparison" between products in which the comparison dishonors the product being compared."

(Citations omitted). *Acme* at 599. Although Sigma alleges that its reputation was harmed by E.piphany's false representations, it does not allege that any of the misrepresentations alluded to Sigma's products. Thus, the complaint does not allege conduct that falls within the personal injury or advertising injury provided by the St. Paul policy. Further, the *Acme* case was decided by the Seventh Circuit, a jurisdiction whose precedent does not govern this situation. The Seventh Circuit also did not authorize the opinion for publication, indicating that the case should not be used as precedent.

The allegations in the Sigma complaint are more akin to the fact situation set forth in *Microtec Research, Inc. v. Nationwide Mutual Ins. Co. et. al*, 40 F.3d 968 (9th Cir. 1994). In *Microtec*, the insured was sued by Green Hills Software, Inc. for passing off Green Hills' code as its own. Microtec tendered the defense to its two insurers, Nationwide and St. Paul. Both insurers denied coverage and Microtec sued for breach of the duty to defend. The Ninth Circuit affirmed the district court's determination that the insurers did not owe a duty to defend because the complaint did not allege conduct that constituted advertising or personal injury. In describing the allegations of the complaint, the court states:

Subparagraph B says Microtec has been selling compilers to Green Hills' customers, enticing them away from Green Hills. Subparagraph C, upon which Microtec relies, says that Microtec's passing off the compilers as original will mislead customers into thinking that Microtec has as much or more technical skill as Green Hills:

Microtec at 970. In analyzing whether the St. Paul policy provided coverage for these allegations, the court observed that the complaint used some words such as "marketing",

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"threatened . . . reputation" and "representing", which, if taken in isolation could suggest a claim for advertising injury. However, the court discerned that Microtec had not said anything negative about Green Hills:

In context, the averment means that Microtec misled customers into thinking that it was capable of writing leading edge compiler code as good as Green Hills'. ... This averment does not say that Microtec falsely advertised that Green Hills' code had bugs, or was slower than Microtec's code. ... Under controlling California law, this is not an "advertising injury" or "personal injury claim."

Microtec at 971. The court went on to hold:

The terms disparage and belittle used in the policies are meant to cover claims that arise under trade libel. Trade Libel is defined as "an intentional disparagement of the quality of property, which results in pecuniary damage." (Citations omitted) ... The Green Hills' complaint does not state a claim for trade disparagement for the same reason it does not state a claim for slander or libel. The claims raised were that Microtec "palmed off" Green Hills' compilers, not that Microtec made a false or injurious statement about the quality of Green Hills' compilers.

Microtec at 972. While the facts in *Microtec* are not identical to those presented here, the principle is the same. Allegations that a defendant made misrepresentations about its own product, without comparison to another product or indeed a negative statement about another product, do not give rise to an advertising or personal injury as defined by the St. Paul policy. California law would also govern this situation because E.piphany had its principal place of business in California and was insured through a California broker.

Based on this analysis, it does not appear that the allegations contained in Sigma Dynamics' First Amended Complaint are covered by the St. Paul policy. But as we discussed, if there are subsequent pleadings in which Sigma makes other allegations against E.piphany, we would be happy to review those pleadings to determine if they affect our coverage determination. Please provide us with any information you think might be relevant to our coverage decision and we will review it and discuss it with you.

We are also happy to discuss any information contained in this letter or information about Sigma Dynamic's claim at any time. Please contact me with your questions or concerns.

Nothing contained in this letter should be construed as a waiver of any term or condition of the St. Paul policy, and St. Paul specifically reserves the right to rely on any other policy provision or defense that might be subsequently found to limit or preclude coverage. Other policy terms, conditions, limitation and/or exclusions might apply to this claim, even if not specifically addressed in this letter.

In accordance with Section 2695.7(b)3 of the California Insurance Regulations, if you believe your claim has been wrongfully rejected or denied, you have the right to have

Gwen Nielsen, Esq.
February 6, 2008
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this matter reviewed by the California Department of Insurance, which can be contacted as follows:

California Department of Insurance
Claims Service Bureau
300 S. Spring Street, 11th Floor
Los Angeles, California 90013
(800) 927-HELP, (800) 927-4357 or (213) 897-8921

The above information is advisory only, and is not intended to either encourage or discourage you from contacting the California Department of Insurance. If you elect to send any correspondence to the California Department of Insurance regarding our handling of this matter, we ask that you please forward us copies of all such correspondence.

Sincerely,

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

By _____
Pamela A. Johnson
Technology and Intellectual Property Group
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pajohnso@travelers.com